

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH FRAME-WILSON, *et al.*, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

No. 2:20-cv-00424-JHC

THIRD AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

[PUBLIC VERSION]

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1 Plaintiffs allege the following on personal knowledge as to themselves and their own acts,
 2 and on information and belief with respect to all other matters based on the investigation made by
 3 their attorneys and experts in the field of antitrust economics.

4 I. INTRODUCTION

5 A. Summary of Amendments

6 1. The Court has now twice denied Amazon.com, Inc.'s ("Amazon") motion to dismiss
 7 Plaintiffs' monopoly claims asserted under Section 2 of the Sherman Act and Plaintiffs' rule-of-
 8 reason-price-fixing claim under Section 1 of the Sherman Act, but previously granted Amazon's
 9 motion to dismiss Plaintiffs' horizontal price-fixing claims under the Sherman Act and under the
 10 Cartwright Act. In their Third Amended Complaint, Plaintiffs do not seek to revive their dismissed
 11 claims. Instead, they seek to narrow their class definition (§§ I.E and VII) and add factual
 12 allegations concerning agreements that Amazon used to continue to restrain competition with other
 13 online retail marketplaces, and to prevent sellers from selling at lower prices outside of Amazon
 14 Marketplace even after Amazon removed its express Price Parity Clause in March 2019. (§§ I.C
 15 and V.C.).

16 2. Amazon's former Price Parity Clause is a platform most favored nations clause
 17 (MFN). It expressly prohibited sellers from selling at lower prices through any other ecommerce
 18 channel. Economists widely recognize that such restraints are anticompetitive and increase retail
 19 prices because they (i) prohibit sellers from selling at lower prices on platforms that charge them
 20 lower fees, and (ii) restrain competition between platforms, in that lowering platform fees is no
 21 longer an effective means for platforms to grow market share by attracting lower retail prices. As
 22 the Court previously recognized, to violate antitrust laws, Amazon's platform MFNs need not be
 23 expressly stated, they may also operate implicitly, such as when Amazon removes a seller's product
 24 from Amazon's "Buy Box," or terminates a sellers' selling privileges in response to a lower price
 25 outside of Amazon Marketplace.¹ Each additional agreement Plaintiffs challenge likewise operates
 26 to stifle sellers' price competition outside of Amazon Marketplace, including removing sellers'

27
 28 ¹ *Frame-Wilson v. Amazon.Com, Inc.*, 664 F. Supp. 3d 1198, 1209 (W.D. Wash. 2023); *De Coster v. Amazon.com, Inc.*, 2023 WL 372377, at *5-6 (W.D. Wash. Jan. 24, 2023).

1 products from the Buy Box and terminating or threatening to terminate selling privileges. Similarly,
 2 in its own enforcement action against Amazon, the Federal Trade Commission alleges that
 3 Amazon's use of the very MFN agreements that Plaintiffs here challenge violates the Sherman Act
 4 and the FTC Act because the policies stifle price competition outside of Amazon, tend to create an
 5 artificial price floor for products sold online, and prevent rival marketplaces from growing by
 6 offering lower prices.²

7 **B. Amazon's Relationship With Its Third-Party Sellers**

8 3. Amazon and its third-party sellers are all online retailers and horizontal competitors
 9 in the online retail market. Amazon operates its own retail business, selling directly to its online
 10 customers on Amazon Marketplace. Amazon operates Amazon Marketplace both as a platform for
 11 its own retail sales business and as a "two-sided platform."³ Amazon designed its platform so that
 12 many "sellers, in addition to Amazon, may list the same product for sale from a single product page
 13 on" Amazon Marketplace.⁴ This arrangement gives sellers access to millions of buyers and gives
 14 buyers access to millions of sellers.⁵ Amazon likens its marketplace to "an online mall where
 15 independent merchants display their products to people perusing the website."⁶ Consumers may
 16 purchase from any seller on Amazon Marketplace, including Amazon, but they make payment
 17 directly to Amazon. Amazon takes a commission with each sale and sellers often pay additional
 18 fees for other services.

19 4. As the largest retail seller on Amazon Marketplace, Amazon sells approximately 12
 20 million unique products, covering a wide range of consumer goods.⁷ Amazon's own retail

21 ² See *Federal Trade Commission v. Amazon.com, Inc.*, Case No. 23-cv-01495-JHC, Dkt. No. 114 (Complaint), ¶¶
 22 7, 17-19, 236, 262-324, and Counts I-VI.

23 ³ See, e.g., Marc Rysman, "The Economics of Two-Sided Markets", *Journal of Economic Perspectives*, Vol. 23,
 24 No. 3 (Summer 2009), pp. 125-143, p. 125 ("Broadly speaking, a two-sided market is one in which 1) two sets of
 agents interact through an intermediary or platform, and 2) the decisions of each set of agents affects the outcomes of
 the other set of agents, typically through an externality... a successful payment card requires both consumer usage and
 merchant acceptance, where both consumers and merchants value each others' participation.").

25 ⁴ Declaration of Ella Irwin, Director of Marketplace Abuse at Amazon (Jul. 13, 2018), *Kangaroo Mfg., Inc. v.*
Amazon.com, Case No. 17-cv-1806SPL (D. Ariz.), Dkt. No. 75 (Irwin Decl.), ¶ 3.

26 ⁵ Declaration of Nicholas Denissen, Amazon's Vice President of Marketplace Business (Jun. 30, 2017), *Oberdorf*
v. Amazon.com, Case No. 16-cv-1127MWB (M.D. Pa.), Dkt. No. 31 (Denissen Decl.), ¶ 5.

27 ⁶ *Id.*

28 ⁷ How Many Products Does Amazon Actually Carry? And in What Categories?, Business Wire (Jun. 14, 2016),
<https://www.businesswire.com/news/home/20160614006063/en/How-Many-Products-Does-Amazon-Actually-Carry-And-in-What-Categories>.

1 customers overlap with those of its third-party sellers, and often Amazon and its third-party sellers
 2 offer the very same product.⁸ As an example, Amazon sells Apple watches on Amazon
 3 Marketplace, while at the same time an Amazon third-party seller, like Adorama, may also sell the
 4 exact same models on Amazon Marketplace as Amazon itself. In other instances, Amazon and its
 5 third-party sellers offer similar products that likewise compete for consumers of the same product
 6 category.

7 5. As a retailer, Amazon has many competitive advantages over the third-party sellers,
 8 with whom it competes in the sale of goods on and off Amazon Marketplace. One critical advantage
 9 is the absence of seller and advertising fees that it charges them to compete on its platform. These
 10 fees add significantly to third-party sellers' cost of doing business on Amazon's platform. For
 11 example, one retailer, Molson Hart, reports that a \$150 item sold on Amazon would make his
 12 company the same profit as an item sold for \$37 less on his company website:

13 We designed, manufactured, imported, stored, shipped the item, and
 14 then we did customer service. Amazon hosted some images, swiped
 a credit card, and got \$40 [for a \$150 toy].

15 This is the core problem. Were it not for Amazon, this item would be
 16 \$40 cheaper. And this is how Amazon's dominance of the industry
 hurts consumers.^[9]



17 6. Because Amazon third-party sellers must factor in these fees when setting their
 18 prices on Amazon Marketplace, this substantially reduces the price competition Amazon's own
 19 retail business faces from competing sellers on Amazon Marketplace. So, in the previous example,
 20 Adorama can sell the same watch as Amazon for \$300, but whereas that sales price nets Amazon
 21 the full \$300, Adorama may only receive about \$255 after Amazon takes its commission and fees.


22 7. Many Amazon third-party sellers also sell on other online marketplaces that offer
 23 more favorable terms for their sellers. For example, eBay typically charges lower seller fees than
 24 Amazon. As the following examples illustrate, all in, Amazon charges its third-party seller about
 25 23% to sell a \$30 book, while eBay charges 16%, and Amazon charges its third-party seller 31%

26
 27 ⁸ Irwin Decl., ¶ 5.

28 ⁹ Molson Hart, *How Amazon's Business Practices Harm American Consumers: Why Amazon Needs a Competitor and Why Walmart Ain't It*, Medium, <https://medium.com/swlh/amazon-needs-a-competitor-and-walmart-aint-it-5997977b77b2> (Hart).

to sell a \$15 DVD, while eBay charges 21% to sell on its platform.¹⁰ In a competitive market, a third-party seller could capitalize on eBay's lower seller fees by lowering the third-party seller's prices for books and DVDs on eBay, and increasing its sales (on eBay) as a result.

Example 1: Books		
Sale Price	\$30.00	
	 eBay	 Amazon
Final Value Fee	\$3.40	\$4.50
Closing Fee	\$0.00	\$1.35
Listing Fee	\$0.30	\$0.99
Paypal Fee	\$1.17	\$0.00
Total Fees	\$4.87	\$6.84
Total Profit	\$25.13	\$23.16
Profit Margin	83.77%	77.20%

Example 2: DVDs		
Sale Price	\$15.00	
	 eBay	 Amazon
Final Value Fee	\$2.12	\$2.25
Closing Fee	\$0.00	\$1.35
Listing Fee	\$0.30	\$0.99
Paypal Fee	\$0.75	\$0.00
Total Fees	\$3.16	\$4.59
Total Profit	\$11.85	\$10.41
Profit Margin	78.97%	69.40%

¹⁰ Max Godin, *Selling on Amazon vs eBay – Discover Which is Better and Why*, CrazyLister (May 15, 2018), <https://crazylistr.com/blog/selling-on-amazon-vs-ebay/>.

8. But Amazon and its third-party sellers contractually agree not to engage in this competition. Sellers enter into these MFN agreements when they register with Amazon Marketplace and “agree[] to the terms of the Amazon Services Business Solutions Agreement (BSA) and the policies incorporated in that agreement.”¹¹ The BSA establishes rules for selling on Amazon Marketplace, and any seller holding an Amazon Seller Account must adhere to them.¹² One such rule is that sellers will not offer their products on competing marketplaces for a lower price than they offer on Amazon.

C. Amazon’s MFN Agreements Improperly Restrains Competition

9. Amazon has used different tools to implement its MFN agreements over time. Before March 2019, the MFN contained in the BSA was an express “Price Parity” provision, governing the price of products the seller offered for sale through its or any of its affiliates’ other retail channels other than physical stores.¹³ The Price Parity required that sellers:

maintain parity between the products you offer through Your Sales Channels and the products you list on any Amazon Site by ensuring that ... the purchase price and every other term of sale ... is at least as favorable to Amazon Site users as the most favorable terms via Your Sales Channels (excluding consideration of Excluded Offers).¹⁴

10. Despite the recognition by multiple regulators of the anticompetitive nature of Amazon’s Price Parity, Amazon continued to enforce that clause in the United States for six more years, until March 2019. Then, under threat of an investigation by the Federal Trade Commission (FTC), Amazon finally withdrew its Price Parity in the United States.¹⁵

11. Despite making this particular change, Amazon has maintained without change its overarching policy of preventing sellers from offering lower prices elsewhere. As Amazon’s documents make clear, the purpose of the change was to deflect potential antitrust liability. Amazon’s decision to withdraw the Price Parity Clause led to “confusion over what the removal of

¹¹ Irwin Decl., ¶ 4.

¹² *Amazon Pricing Policy*, Feedadvisor, <https://feedvisor.com/university/amazon-pricing-policy/>.

¹³ Irwin Decl., Ex. A at 14 and 18 (section S-4 Parity with Your Sales Channel).

¹⁴ *Id.*, Ex. A at 18.

¹⁵ See, e.g., Greg Magana, *Amazon is ending its restrictive pricing practice*, Business Insider (Mar. 13, 2019), <https://www.businessinsider.com/amazon-ends-restrictive-pricing-parity-2019-3>.

1 the policy meant to our Selling Partners.”¹⁶ Some sellers “thought that the removal of the policy
 2 meant that there was no longer any price competitiveness requirements[.]”¹⁷ Amazon’s response
 3 was swift: “We worked with reporters on background to make clear that our expectations and
 4 policies have not changed, but did not go on record as we had competing strategic interests.”¹⁸

5 12. Those “competing strategic interests” were blunting the threat of regulatory action
 6 by the U.S. government, while simultaneously ensuring that Amazon’s anticompetitive strategy
 7 continued. Even as Amazon “propose[d] to tighten [its] pricing rules” in order throttle competition
 8 from non-Amazon retailers, it recognized that both the “media and selling partners may claim that
 9 the removal of the clause was not only trivial but a trick and an attempt to garner goodwill with
 10 policymakers amid increasing competition concerns.”¹⁹

11 13. Neither backlash from the media nor third-party sellers deterred Amazon’s plan.
 12 Instead of abandoning its price parity restrictions, Amazon quietly improved its Buy Box eligibility
 13 algorithm to further tighten pricing restrictions. “As planned, these action[s] will require [sellers]
 14 to match external prices in order to have their offers available through the Amazon store.”²⁰
 15 Although Amazon continued to communicate that it would require parity to sellers, it hid the
 16 method it planned to use to achieve that goal: “we do not recommend proactively communicating
 17 the tightening of our pricing rules.”²¹ That method was the “Select Competitor – Featured Offer
 18 Disqualification,” or “SC-FOD” algorithm, which Amazon introduced in mid-2015 and which
 19 Amazon expanded as a tool for securing third-party sellers’ price parity after it repealed the Price
 20 Parity Clause.

23 ¹⁶ CAAGLit-AMZ_01847634 (Brand Program PR Stress Test (April 2019)) at p.8. *See also* CAAGLit-
 24 AMZ_00210513 (IN 3P Pricing Affordability 2019 OP1) at p.10 (discussing SC-FOD and recognizing “that regulators
 may view” any corrective action that Amazon might take “when Sellers price higher on Amazon than other
 marketplaces” as “enforcing price parity,” especially in EU and JP, where Amazon had already removed the Price
 Parity Clause).

25 ¹⁷ CAAGLit-AMZ_01847634 (Brand Program PR Stress Test (April 2019)) at p.8.

26 ¹⁸ *Id.*

27 ¹⁹ *Id.*

28 ²⁰ *Id.* The sellers at issue in this specific document are brand sellers—and the policy under discussion was the ASB
 policy—but the operation of the SC-FOD was and is broader.

²¹ *Id.* (emphasis in original).

14. Amazon uses an algorithm to disqualify a seller's offer from winning the "Buy Box" if Amazon detects a price that is lower—even by a penny—for that product on any online store that Amazon designates as a "Select Competitor."²² The "Buy Box" is the display from which a shopper can "Add to Cart" or "Buy Now" an Amazon-selected offer for a product. Elimination of the "Buy Box" button from the third-party seller's listing is devastating to the seller's business because, as Amazon internally estimated, 99% of all new units purchased were sold by the Featured Offer/Buy Box winners.²³ In fact, most buyers searching for a product on Amazon's marketplace will see a third-party seller's product only if it has the Buy Box. By forcing third-party sellers that violate its MFN agreements to try to sell their goods without the Buy Box, Amazon puts them at a significant competitive disadvantage.²⁴

15. Achieving price parity through the elimination of lower prices outside of Amazon Marketplace is the overarching goal of the SC-FOD, and Amazon punishes sellers if it finds lower prices off Amazon.²⁵ Amazon systematically communicates this policy to its sellers. For example, Amazon explains to sellers: "Let's say I'm shopping for a three-pack of Clorox wipes, . . . And let's say the price available outside Amazon for this item is \$9.00. If I search for the same wipes on Amazon, and they are priced at \$10.00, we consider that price to be un-competitive. For the product to be competitively priced, it would have needed to be priced at \$9.00 or below on Amazon. In fact, we consider a price to be un-competitive even if it is one cent above the price available outside Amazon!"²⁶ Once Amazon deems an offer "un-competitive," it punishes the seller by taking away Buy Box access.²⁷

²² See CAAGLit-AMZ_02289543.

²³ See, e.g., AMZN_PPC_0000000956 at p.4.

²⁴ Spencer Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*, BLOOMBERG (Aug. 5, 2019) <https://www.bloomberg.com/news/articles/2019-08-05/amazon-is-squeezing-sellers-that-offer-better-prices-on-walmart>.

²⁵ See Andre Boik & Kenneth S. Corts, *The Effects of Platform Most-Favored-Nation Clauses on Competition and Entry*, 59 J.L. & ECON. 105, 109 (2016) (analyzing the anticompetitive effects of product-level platform MFNs, i.e. restraints on "price-setting monopoly seller[s]" that eliminate lower-priced options for the same product on any other platform).

²⁶ CAAGLit-AMZ_02289543 at Slide 3 (notes).

²⁷ *Id.* at Slide 6 (notes).

1 16. When Amazon disqualifies a seller's offer from the Buy Box, it tells the seller that
 2 Amazon detected a lower price elsewhere and what that price is.²⁸ Amazon does not, however, tell
 3 the seller where it found the lower price. Amazon internally acknowledges, "we are deliberately
 4 providing limited information about how we generate competitor prices."²⁹ By keeping sellers in
 5 the dark about the source of the lower price, Amazon maintains a perpetual threat that—if the seller
 6 reduces their prices *anywhere* off of Amazon—Amazon will punish them.

7 17. Amazon has continued to modify and expand its SC-FOD algorithm over time.
 8 Among other things, Amazon expanded the number of online stores that it monitored after it
 9 eliminated the Price Parity Clause from its Business Solutions Agreement.³⁰ As of two years ago,
 10 Amazon estimated that globally it regularly tracked nearly [REDACTED] price comparison points for
 11 purposes of implementing its MFN agreements.³¹ This expansion increased the punitive aspects of
 12 the SC-FOD algorithm, by ensuring that more products were monitored and more sellers were
 13 penalized.

14 18. Internally, Amazon acknowledges that the policy, while highly effective in
 15 preventing competition outside of Amazon Marketplace, does not *actually* reduce prices on
 16 Amazon: "Buy Box removal does not motivate Sellers to lower prices. And given that the lowest
 17 [external competitor] SIC price is higher than [the cost of goods] COGS+ fees on [REDACTED] of SIC
 18 uncompetitive 3P unique ASINs, we shouldn't expect that it would[.]"³² Put simply, Amazon's fees
 19 are so high that sellers cannot reduce their prices on Amazon. Instead, they simply raise their prices
 20 elsewhere.

21 19. Therefore, just like its Price Parity Clause, Amazon's SC-FOD punishes sellers for
 22 offering prices off Amazon that are lower than their prices on Amazon, even where their costs are
 23 lower through other online sales channels. That, in turn, limits the ability of competing platforms
 24

25 ²⁸ *Id.* at Slide 8.

26 ²⁹ AMZN_PPC_0000003559 (Internal Press Release) at p.9.

27 ³⁰ *See, e.g.*, CAAGLit-AMZ_03259346 ("In April, we reviewed and aligned on plan to improve price perception
 by expanding SC-FOD to all [Image Competitors] [world wide] [REDACTED] [.]"); *see also* CAAGLit-
 28 AMZ_04000738 (historical list of external competitors).

³¹ CAAGLit-AMZ_00213922 at p.2.

³² CAAGLit-AMZ_00213922 at p.2.

1 to offer retail prices lower than those on Amazon, hindering the growth of would-be rivals and
2 denying them the scale necessary to compete.

3 20. But the SC-FOD is not Amazon's only current MFN agreement. Although Amazon
4 removed the Price Parity Clause from the Business Service Agreement in March 2019, it retained
5 other MFN agreements to further the same goals. For instance, the "Amazon's Standards for
6 Brands" ("ASB") program includes MFN agreements. The ASB program, introduced in 2018, is
7 incorporated by reference in the BSA.³³ The program prevents brand owners and their seller
8 representatives from offering a lower price off of Amazon than they offer on Amazon or allowing
9 their distributors to do so.

10 21. For example, in June 2019, when Amazon realized that a third-party seller was
11 [REDACTED] such as [REDACTED] and was "in violation of the Standards
12 for Brand Selling," an Amazon Director suggested removing the seller's products not only from
13 Buy Box eligibility but from the Offer Listings Page entirely, so "the selection for time being
14 wouldn't be buyable" at all. Amazon proceeded to do so and notified the seller that its offers had
15 been suppressed due to its failure to comply with ASB. When Amazon called the seller to ask why
16 it had not brought its prices off Amazon in-line with its on-Amazon prices, the seller assured
17 Amazon that "the low price offered by the other Retailer" [REDACTED]—"will be fixed
18 by Monday." Amazon informed the seller that its products were also offered for a lower price on
19 [REDACTED] In response, the seller assured him that "they would discuss with their wholesale team and
20 get the price updated on [REDACTED] and any other Retailers as well (by Monday)." Amazon was
21 pleased "to see the Brand was actively engaged/interested in correcting the issue"—which the brand
22 accomplished by causing other retailers to raise their prices for its products.³⁴

23 22. The penalties for violating this program are dire. Like the SC-FOD, sellers receive
24 "price alerts" with a warning from Amazon that show the product, the price on Amazon and the
25 price found elsewhere on the web without identifying the competing website.³⁵ Brand owners and
26

27 ³³ See, e.g., CAAGLit-AMZ_04282017 (BSA Version 13 (Apr 30-2018)) ("General Terms").

28 ³⁴ AMZN_PPC_0000002582 (email chain, ending Jun. 23, 2019) at pp.2-6.

³⁵ *Supra* Soper.

1 their third-party seller representatives also face the further risk of losing “the opportunity to operate
 2 as a seller in the Amazon store altogether” if they do not maintain price competitiveness.³⁶ Amazon
 3 sets a price competitiveness and selection availability target of 95% for [REDACTED] of well-known
 4 brands and has removed selling privileges for [REDACTED] of brands that failed to meet these targets.³⁷
 5 Sellers that sell at least [REDACTED] of the applicable brand’s total sales on Amazon and generate at least
 6 [REDACTED] in GMS, are required to meet Amazon’s 95% price competitiveness requirement. While
 7 [REDACTED] of such third-party sellers have met this criterium and continued to sell the brand products,
 8 there are also [REDACTED] who fail to meet that standard. This loss of selling privileges is in addition to
 9 losing the Buy Box. Amazon has internally recognized that its brand “Sellers live in constant fear
 10 that their accounts will be suspended, or that top selling products will be removed, putting their
 11 businesses and livelihoods at risk.”³⁸

12 23. Similarly, Amazon’s November 2021 clarification of its Seller Code of Conduct
 13 reflects its MFN agreement. Like the ASB program, the Seller Code of Conduct is incorporated by
 14 reference into Amazon’s Business Solutions Agreement.³⁹ The former Price Parity Clause provided
 15 that “any ‘low price’ guarantee, rebate or discount, any free or discounted products or other benefit
 16 available as a result of purchasing one or more other products” must be “at least as favorable to
 17 Amazon Site users as the most favorable terms upon which a product is offered or sold via Your
 18 Sales Channels[.]”⁴⁰ Likewise, despite removing the Price Parity Clause in March 2019, Amazon’s
 19 “clarification” to sellers is that it “consider[s] it a violation of the Amazon Seller Code of Conduct
 20 if off-Amazon rebates, discounts, and other schemes are designed to drive customers to products
 21 that are listed and sold without those incentives on Amazon.”⁴¹

22
 23
 24 ³⁶ AMZN_PPC_0000001386 (Standards for Brands Selling in the Amazon Store).

25 ³⁷ AMZN_PPC_0000001099 (data responsive to California Attorney General Interrogatory No. 33); CAAGLit-AMZ_00043698 (Amazon Standards for Brands Program Update—3/10/2021) at p.1; CAAGLit-AMZ_02037765 (Amazon Standards for Brands Program Update-10/20/2020) at p.2.

26 ³⁸ CAAGLit-AMZ_01150094 (Empowering Brands Direct) at p.9.

27 ³⁹ See, e.g., CAAGLit-AMZ_04282017 (BSA Version 13 (Apr 30-2018)) (“General Terms”).

28 ⁴⁰ CAAGLit-AMZ_04282017 (BSA Version 13 (Apr 30-2018)), S-4.

⁴¹ AMZN_PPC_0000000313 (Seller Code Conduct-Clarification of Amazon Policy on Rebates, Coupons, other Marketing Incentives 2021-11).

24. Further, Amazon’s Marketplace Fair Pricing Policy (introduced in November 2017 and incorporated by reference in the BSA) reflects its MFN agreement. The Marketplace Fair Pricing Policy states that, if a third-party seller engages in pricing practices with regard to “a marketplace offer that harms customer trust,” Amazon may impose sanctions.⁴² According to the policy, a third-party seller commits a “pricing practice that harms customer trust” if that merchant lists goods on a competing online retail platform at prices that are significantly below its Amazon list prices.⁴³

25. Amazon’s MFN agreements have a clear overarching goal: ensure price parity. Since the advent of the Price Parity Clause and continuing today, Amazon requires sellers to keep prices off Amazon as high or higher than prices on Amazon. It does so by making the third-party seller’s product ineligible for a feature (the “Buy Box” button) that would make the product the most visible and easiest to purchase among similar goods; removing the third-party seller’s goods from Amazon’s marketplace; suspending shipping options for the third-party seller’s goods; and terminating or suspending the third-party seller’s ability to have any goods sold on Amazon’s marketplace.⁴⁴

26. Amazon uses the sanctions under its MFN agreements “as a way to penalize sellers that offer products at a lower price on competing sites.”⁴⁵ For example, the suspension of a third-party seller’s account has “dire consequences for the seller” and was cited by the Congressional Investigation as an “egregious example[]” of Amazon’s bullying of third-party merchants.⁴⁶

27. By thus agreeing to manipulate online retail prices, Amazon and its online retail competitors violate Section 1 of the Sherman Act.

⁴² Amazon Seller Central, *Amazon Marketplace Fair Pricing Policy*, https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVMN77V?language=en_US&ref=efph_G5TUVJKZHUVMN77V_cont_521.

⁴³ *Id.* (stating that “[s]etting a price on a product or service [on Amazon] that is significantly higher than recent prices offered on *or off* Amazon” violates the “Fair Pricing” Policy. This is an MFN agreement because the third-party merchant is out of compliance with Amazon’s policy if it competes with Amazon’s platform by setting prices on competing platforms at a price lower than the price it sets on Amazon).

⁴⁴ *Id.*

⁴⁵ SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, 116th CONG., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS, MAJORITY STAFF REPORT AND RECOMMENDATIONS (“House Report”) at 296 (2020), https://democrats-judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf.

⁴⁶ *Id.* at 270.

28. The outcome is the same both under Amazon’s former Price Parity Clause and its current MFN agreements: sellers cannot freely price their goods according to their costs unless they want to forego sales on Amazon Marketplace. Those MFN agreements have two major anticompetitive effects.

29. *First*, Amazon’s MFN agreements restrain competition—lower prices—outside of Amazon Marketplace by punishing sellers who sell their products or allow their products to be sold for less off of Amazon.⁴⁷ Amazon has thereby insulated itself from horizontal price competition for the goods it sells as a retailer on its marketplace, allowing it to maintain supra-competitive prices for its goods. As the German competition authority found in its investigation of Amazon’s marketplace, the point of Amazon’s MFN agreements is to safeguard its significant market share of retail sales as a first-party seller against competition by third-party sellers. Specifically, the German competition authority concluded that Amazon’s Price Parity Clause “cannot be seen” as “an indispensable restriction” on its third-party sellers, but rather, as a restriction to protect “Amazon’s large own-account [*i.e.*, first-party] share of sales as a competitor.”⁴⁸ But for Amazon’s MFN agreements, third-party sellers would list their goods at lower prices on other platforms that charged lower (or no) fees,⁴⁹ and—facing price competition from third-party merchants—Amazon would also have to lower prices for its own goods to compete with the lower-priced, third-party-seller goods.

30. *Second*, despite Amazon’s own overpriced marketplace fees, its MFN agreements prevent Amazon Marketplace third-party sellers from diverting to consumers on other online retailers because Amazon compels third-party sellers to sell on Amazon at prices that meet or beat the prices available on other online retailers.

⁴⁷ In its 2013 report on Amazon’s marketplace rules in Germany, BKartA determined that Amazon’s price parity clause was a “hardcore restriction” on the third-party merchants’ competition “in all product categories” sold in Amazon’s marketplace. A “poll of 2,500 online retailers” conducted by BKartA further demonstrated that the price parity clause caused “significant price increases in e-commerce.” *Amazon Removes Price Parity Obligation for Retailers on Its Marketplace Platform*, BUNDESKARTELLAMT (Federal Cartel Office of Germany), at 3 (Dec. 9, 2013) (“BKartA Decision”), http://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B6-46-12.pdf%3F__blob%3DpublicationFile%26v%3D2.

⁴⁸ *Id.*

⁴⁹ *Supra* Hart.

31. *Third*, Amazon’s MFN agreements neutralize Amazon’s competition from other online retail marketplace operators (like eBay), allowing Amazon to continue to charge supra-competitive fees for the use of its marketplace even if its platform competitors offer lower marketplace fees. That is because third-party sellers incorporate fees into their list prices. Normally, competing marketplaces therefore would have an incentive to lower fees so that third-party sellers would post lower list prices and thereby attract more customers. But Amazon’s MFN agreements prohibit or disincentivize lower list prices on competing marketplaces. These policies thus allow Amazon to avoid price competition from marketplaces with lower commissions, which protects Amazon’s inflated fees. Competing marketplaces cannot expand to attract more business—and new marketplaces cannot enter the market to compete—by lowering fees and prices. This is consistent with the Germany authority’s findings: It concluded that Amazon’s Price Parity Clause had a direct anticompetitive “effect on [competing] Internet marketplace operators.”⁵⁰ The “major competitive parameter—the fees for platform services—[was] neutralised by the price parity clause, since more favourable fees [could] not be translated into more favourable prices for final customers.”⁵¹ Amazon’s Price Parity Clause therefore created a “barrier[] to market entry for new competitors and hinder[ed] the expansion of existing competitors in the [online retail marketplace] market,” preventing competing marketplaces “from establishing a greater reach.”⁵²

32. Amazon’s MFN agreements act both as a restraint on the prices of third-party-seller goods to protect the supra-competitive prices of Amazon’s retail goods, and also as a restraint on the fees of competing marketplaces to protect the supra-competitive fees of Amazon’s own marketplace. Amazon’s MFN agreements therefore cause Amazon customers to pay more for goods purchased on its marketplace than they would pay in a competitive market. Amazon’s conduct has resulted in supra-competitive prices for all goods offered on Amazon’s marketplace: those of third-party sellers and those of Amazon—prices that could not be maintained in the absence of Amazon’s illegal MFN agreements.

⁵⁰ BKartA Decision at 3.

⁵¹ *Id.*

⁵² *Id.*

1 33. Amazon’s MFN agreements are not mere policies on paper. Amazon’s massive
2 price-surveillance group, the Competitive Monitoring Team, constantly crawls the internet,
3 globally providing [REDACTED] price comparisons” and [REDACTED] price
4 comparisons.”⁵³ This allows Amazon to regularly and aggressively enforce its MFN agreements
5 against its sellers to ensure that they are not listing their goods at lower prices on other retail sites.

6 34. Though Amazon’s MFN agreements are burdensome, third-party sellers cannot
7 afford to disobey them because Amazon has massive and durable market power, as discussed
8 above. And, as the House subcommittee on antitrust found, Amazon’s “market power is at its height
9 in its dealings with third-party sellers”⁵⁴; they feel “forced to be on Amazon” and believe that they
10 “don’t have a choice but to sell through Amazon.”⁵⁵ In other words, in their view, it is a “must
11 have” marketplace. And Amazon’s customers have no incentive to flee Amazon because they
12 typically cannot find better prices on rival marketplaces, even when those marketplaces’ lower fees
13 would suggest that their prices would be lower.

14 35. Critically, outside of Amazon Marketplace, most third-party sellers have a separate
15 retail business. Eighty percent of Amazon’s third-party sellers also sell their products on other
16 online retail websites that compete with Amazon Marketplace, most commonly on eBay, their own
17 websites, or Walmart.⁵⁶

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25 ⁵³ CAAGLit-AMZ_00213922 at p.2.

26 ⁵⁴ House Report at 15.

27 ⁵⁵ *Id.* at 87, 270.

28 ⁵⁶ Rani Molla & Jason Del Rey, *A fifth of professional Amazon merchants sell more than \$1 million a year — double the share from last year*, Vox (May 23, 2018), <https://www.vox.com/2018/5/23/17380088/amazon-sellers-survey-third-party-marketplace-walmart-ebay>; Catie Grasso, *The State of the Amazon Marketplace 2019*, Feedadvisor, (May 15, 2019), <https://feedvisor.com/resources/amazon-trends/the-state-of-the-amazon-marketplace-2019/>.



36. The MFN agreements directly impact competition between Amazon and its third-party sellers, beginning with the “Buy Box,” where most sales on Amazon Marketplace take place. In Amazon’s own words, all sellers may “compete for the Buy Box, which is awarded to the best performing seller. Amazon may win the Buy Box like any other seller.”⁵⁷

37. When consumers log onto Amazon Marketplace, they conduct a search for a good or a specific product (like “Chapstick” or “lip balm”). Amazon Marketplace applies an algorithm that analyzes the hundreds of millions of product offerings on its site and returns ranked search results responsive to that search. The top-ranking offer occupies the Buy Box and is prominently displayed in the search results on the right side of the product detail page. By clicking on the Buy Box (typically identified by the signal “buy now” or “add to cart”) on this page, the customer purchases from the seller with the winning offer. To view all other offers, the customer usually must leave the product detail page and scroll through the offer listing pages, which typically provide offers from sellers with higher prices, slower delivery times, or lower approval ratings than the Buy Box winner, as the following images illustrate:⁵⁸

⁵⁷ Irwin Decl., ¶ 13.

⁵⁸ *How to Win the Buy Box on Amazon: Ecommerce’s Most Exclusive Neighborhood*, Big Commerce: <https://www.bigcommerce.com/blog/win-amazon-buy-box/#what-is-the-amazon-buy-box>.

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ChapStick Skin Protection Sunscreen Moisturizer, Original SPF 12 0.15 oz (Pack of 6) by Chapstick

★★★★★ 43 customer reviews

SEALED FOR PROTECTION

ChapStick® 8 HOUR MOISTURIZER | original

6 pack

The Buy Box

Other sellers on Amazon

About the product

- Ultra-hydrating lip balm.
- Softens and protects lips every day with 11 moisturizing ingredients.
- SPF 12 provides UVB protection.
- Hydrating formula contains aloe and vitamin E.

Price: \$9.90 (\$1.65 / Count) & FREE Shipping

In Stock. Ships from and sold by Pharmapacks.

Get it as soon as Tuesday, Nov. 6 when you choose Four Day Delivery at checkout.

Deliver to Austin 78759

Qty: 1

Turn on 1-click ordering

Add to Cart

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Other Sellers on Amazon 14 new from \$7.91

\$10.69 (\$1.78 / Count) + Free Shipping
Sold by: Hills Trading Corp. Add to Cart

\$5.95 (\$0.99 / Count) + \$4.99 shipping
Sold by: Lily's Supermarket Add to Cart

Share

Natures amazing botox - anti aging & wrinkles

Return to product information Every purchase on Amazon.com is protected by an A-to-z guarantee. Feedback on this page? Tell us what you think

ChapStick Skin Protection Sunscreen Moisturizer, Original SPF 12 0.15 oz (Pack of 6)

by Chapstick

★★★★★ 43 customer reviews | Share

Size: 0.15 oz (Pack of 6)

\$9.90 (Pack of 6)

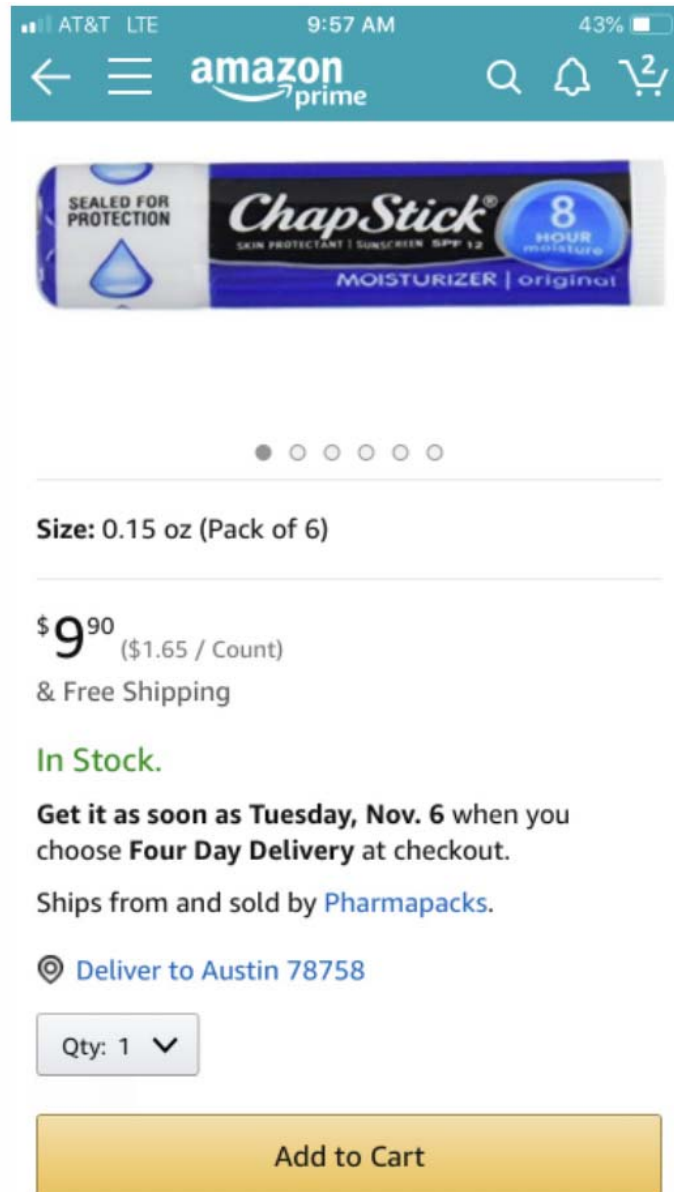
Refine by Overall	Price + Shipping	Condition (Learn more)	Delivery	Seller Information	Buying Options
Shipping <input type="checkbox"/> Expedited <input type="checkbox"/> Free shipping	\$7.91 (\$1.32 / Count) & FREE Shipping	New	<ul style="list-style-type: none"> Arrives between November 7-15. Want it delivered Wednesday, November 17? Choose Standard Shipping at checkout. Shipping rates and return policy. 	EverDirect ★★★★★ (7) 76% positive over the past 12 months. (11,612 total ratings)	Add to cart
Condition <input checked="" type="checkbox"/> New	\$9.90 (\$1.65 / Count) & FREE Shipping	New	<ul style="list-style-type: none"> Arrives between November 6-8. Want it delivered Wednesday, November 17? Choose Expedited Shipping at checkout. Shipping rates and return policy. 	Pharmapacks ★★★★★ 99% positive over the past 12 months. (762,466 total ratings)	Add to cart
	\$10.69 (\$1.78 / Count) & FREE Shipping	New	<ul style="list-style-type: none"> Arrives between November 5-8. Want it delivered Wednesday, November 17? Choose Expedited Shipping at checkout. Shipping rates and return policy. 	Hills Trading Corp. ★★★★★ 99% positive over the past 12 months. (5,578 total ratings)	Add to cart
	\$5.95 (\$0.99 / Count) + \$4.99 shipping	New	<ul style="list-style-type: none"> Arrives between November 6-8. Ships from FL, United States. Shipping rates and return policy. 	Lily's Supermarket ★★★★★ (5) 86% positive over the past 12 months. (526 total ratings)	Add to cart
	\$10.99 (\$1.83 / Count) & FREE Shipping	New	<ul style="list-style-type: none"> Arrives between November 7-14. Want it delivered Tuesday, November 17? Choose Expedited Shipping at checkout. Shipping rates and return policy. 	UBingVita ★★★★★ 90% positive over the past 12 months. (12,119 total ratings)	Add to cart

23 38. On mobile devices, the Buy Box has even greater importance. It features the Buy

24 Box directly under the product image without identifying any other sellers or showing app users

25 the option of viewing the offer listing page, as the following image illustrates:⁵⁹

⁵⁹ *Id.*



39. Consumers regularly rely on Amazon's selection of the Buy Box winner, where virtually all sales occur.⁶⁰

40. As a result of the above, Amazon's MFN agreements harm competition and cause consumers to pay higher prices than they would in a competitive market both (1) for goods listed by third-party sellers on Amazon's marketplace; and (2) for goods listed by third-party sellers on other platforms, including marketplaces and single-merchant websites. The loss of competition also

⁶⁰ Emily Sullivan, *Winning the Amazon Buy Box [Algorithm Tips for 2024]*, TINUTI (Oct. 24, 2023), <https://tinuti.com/blog/amazon/win-amazon-buy-box/>.

1 represents the loss of quality and innovation that a competitive market fosters. Existing
 2 marketplaces cannot expand by competing on price and new marketplaces cannot enter the market
 3 to compete on price.

4 41. The outcome is the same both under the Price Parity Clause and its current MFN
 5 agreements: sellers cannot freely price their goods according to their costs unless they want to
 6 forego sales on Amazon Marketplace. And in many cases, they must raise their prices or forego
 7 discounting on other sites to comply with Amazon's MFN agreements.

8 42. Amazon cannot justify its price restraint as a potentially permissible restraint on
 9 intrabrand competition (like a minimum resale agreement between a manufacturer and its
 10 distributors). Contractually, Amazon disclaims "any partnership, joint venture, agency, franchise,
 11 sales representative, or employment relationship between" it and its third-party sellers.⁶¹ Amazon
 12 also does not supply any products to its third-party sellers for resale, nor does Amazon enforce the
 13 MFN agreements at the request of brand manufacturers in furtherance of intrabrand competition.
 14 On the contrary, the MFN agreements apply to all goods third-party sellers sell, including brands
 15 that compete with each other. These agreements directly restrain online competition between
 16 Amazon, for example, in its sale of Hanes, Jockey, and AmazonBasic undershirts, and third-party
 17 sellers of Hanes or Jockey undershirts.

18 43. Walmart operates its own competing online marketplace platform. Many of
 19 Amazon's third-party sellers also sell there and incur fewer fees. For example, an account
 20 manager—a free service on Walmart—costs \$1600 per month + 0.3% of total sales on Amazon,
 21 capped at \$5,000 per month.⁶² Amazon added this service (and the additional fee) to address the
 22 often-cited complaint from its third-party sellers that Amazon's largely faceless organization makes
 23 it impossible for them to navigate glitches and changing rules.⁶³ About 94% of third-party sellers
 24 rely on storage, packaging and delivery by Amazon (Fulfillment by Amazon or FBA), and until
 25

26 ⁶¹ Irwin Decl., Ex. A at 6 ¶ 13.

27 ⁶² Strategic Account Services-Core, Amazon, https://sell.amazon.com/programs/paid-services.html?ref=_soa_rd&.

28 ⁶³ Hillary Milnes, *Amazon is chasing growth and shifting resources to third-party sellers*, Digiday (Jan. 31, 2019), <https://digiday.com/marketing/amazon-chasing-growth-shifting-resources-third-party-sellers/>.

2020, Walmart had no equivalent of this service.⁶⁴ One non-service related cost to FBA sellers is a \$0.20 per unit cost to provide individual sku stickers—otherwise Amazon will store a seller’s products with other sellers’ inventory, and “if other sellers have sent in a counterfeit product or used-condition product that they are trying to pawn off as a new-condition product, now the new seller may get itself into trouble with Amazon for selling a problematic product to a customer even if it was technically not their product.”⁶⁵ Walmart has no equivalent fee.

44. Amazon also charges its third-party sellers optional advertising fees to ensure that their products show up when customers search for their products on Amazon Marketplace. “Those fees make it harder” for sellers to lower their “prices on Amazon; instead, sellers are likely to raise their prices elsewhere.”⁶⁶ Walmart’s on-platform advertising service, which just began in 2020, is neither as extensive as Amazon’s nor, because of the relatively small number of sellers and products, as necessary to make sellers’ products visible.⁶⁷ Amazon’s third-party sellers could therefore profitably lower their prices on Walmart’s platform if not restrained by Amazon. And in fact, Walmart routinely does field requests from third-party sellers to raise prices on its marketplace because they worry that a lower price on the Walmart platform will jeopardize their sales on Amazon Marketplace.⁶⁸

45. Many of the 2.3 million retailers who sell on Amazon Marketplace do so reluctantly. “Virtually every manufacturer and retailer of consumer goods in America faces [the] same predicament,” explained Stacy Mitchell, co-director of Institute for Local Self-Reliance, in recent testimony to the House of Representatives’ Judiciary Committee.⁶⁹ “In order to reach more than

⁶⁴ Melissa Repko, Walmart steps up competition with Amazon by fulfilling orders for third-party vendors, CNBC (Feb. 25, 2020), <https://www.cnbc.com/2020/02/25/walmart-wants-to-make-it-easier-for-third-party-vendors.html>.

⁶⁵ James Thompson, *Amazon Selling Pitfalls Even the Savviest Sellers Forget*, Big Commerce, <https://web.archive.org/web/20220706062103/https://www.bigcommerce.com/blog/amazon-selling-pitfalls-problems/#fulfillment-by-amazon>.

⁶⁶ Nick Statt, *Amazon price alerts are leading sellers to raise prices on Walmart or risk losing perks*, The Verge, (Aug. 5, 2019), <https://www.theverge.com/2019/8/5/20755342/amazon-marketplace-antitrust-sellers-raise-prices-walmart-competition-ftc>.

⁶⁷ *Why Walmart is the Next Blue Ocean Opportunity for Ecommerce Marketers* (May 13, 2020), TINUITI, <https://tinuiti.com/blog/walmart/why-walmart-is-the-next-blue-ocean-opportunity-for-ecommerce-marketers/>.

⁶⁸ Spencer Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*, Bloomberg (Aug. 5, 2019) <https://www.bloomberg.com/news/articles/2019-08-05/amazon-is-squeezing-sellers-that-offer-better-prices-on-walmart>.

⁶⁹ Testimony of Stacy F. Mitchell, Co-Director Institute for Local Self-Reliance, (Jul. 16, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-MitchellS-20190716.pdf>.

half of the online market, they have to sell through a platform operated by one of their most aggressive and formidable competitors,” which she describes as “a bitter pill.”⁷⁰ Amazon’s ownership of the largest retail marketplace platform gives it the necessary leverage to restrain its third-party sellers from competing anywhere else on price. Almost half of Amazon’s third-party sellers generate 81% to 100% of their revenues from sales on Amazon Marketplace.⁷¹ As its third-party seller, Molson Hart, succinctly puts it: “[W]e have nowhere else to go and Amazon knows it.”⁷²

46. By enforcing MFN agreements that prohibit or disincentivize millions of third-party sellers from competing on price outside Amazon Marketplace, Amazon engages in a price-fixing scheme that broadly and anticompetitively impacts virtually all products offered for sale in the U.S. retail e-commerce market. There has been no greater harm from a price fixing scheme in U.S. antitrust history.

D. Through Their MFN Agreements, Amazon And Its Third-Party Sellers Combine to Confer Amazon Marketplace’s Monopoly Power

47. Section 2 of the Sherman Act prohibits combinations and conspiracies to monopolize. Through their MFN agreements, Amazon combines or conspires with its third-party sellers to create and maintain Amazon Marketplace’s monopoly power. This exercise of monopoly power hurts consumers. Were it not for these anticompetitive MFN agreements, the e-commerce market price for products sold by Amazon’s third-party sellers would be substantially cheaper and the market would provide more competition, consumer choice and innovation in online retail shopping.

48. Amazon is “the world’s largest online retailer.”⁷³ Its market valuation recently rose to \$1.5 trillion, “more than that of Walmart, Target, Salesforce, IBM, eBay, and Etsy combined.”⁷⁴

⁷⁰ *Id.*

⁷¹ Stephanie Chevalier, *Percentage of e-commerce revenue from Amazon sales according to Amazon marketplace sellers in 2018*, Statista (Feb 16, 2023), <https://www.statista.com/statistics/886918/amazon-revenue-share-of-amazon-sellers/>

⁷² *Supra* Hart.

⁷³ Irwin Decl., ¶ 2.

⁷⁴ Antitrust Subcommittee Chair Cicilline Statement for Hearing on “Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google,” U.S. House of Representatives Judiciary

Amazon Marketplace captures around 90% of all online marketplace sales.⁷⁵ By comparison, Amazon's two closest competitors in online marketplaces, Walmart and eBay, account for only 7.1% and 4.3%, respectively, of online retail sales revenue and are only peripheral players in the online retail marketplace market.⁷⁶

49. The figures below also show Amazon Marketplace's dominant position in the online retail market and how its conduct can affect the whole e-commerce sector.

50. The U.S. e-commerce market is dominated by Amazon Marketplace, which accounts for over half of all online retail sales.⁷⁷



51. Amazon Marketplace's market share has been increasing, as shown by the growth of its sales.⁷⁸

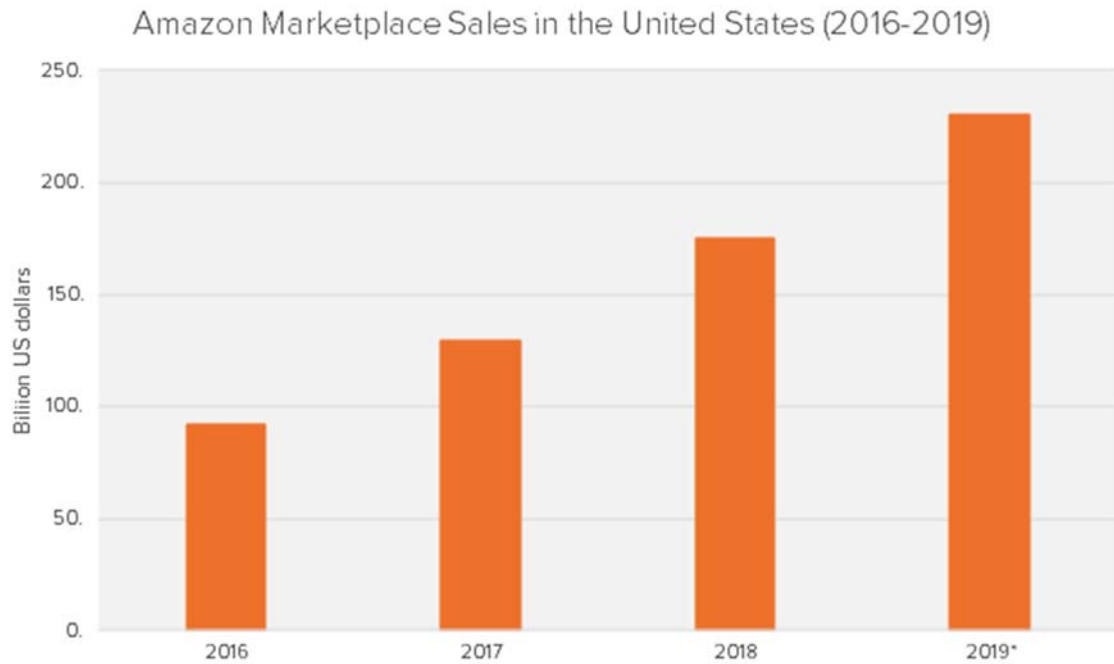
Committee Democrats, Press Release (Jul. 29, 2020), <https://democrats-judiciary.house.gov/news/documentsingle.aspx?DocumentID=3199>.

⁷⁵ Amazon Marketplace is 25% of US E-commerce.

⁷⁶ Blake Droesch, *Amazon dominates US ecommerce, though its market share varies by category*, eMarketer (Apr. 27, 2021), <https://www.emarketer.com/content/amazon-dominates-us-ecommerce-though-its-market-share-varies-by-category>.

⁷⁷ House Report at 255.

⁷⁸ Daniela Coppola, *Amazon marketplace sales in the United States from 2016 to 2019*, Statista (Feb 13, 2024), <https://www.statista.com/statistics/882919/amazon-marketplace-sales-usa/>.



52. Third-party sellers account for the majority of sales on Amazon Marketplace⁷⁹



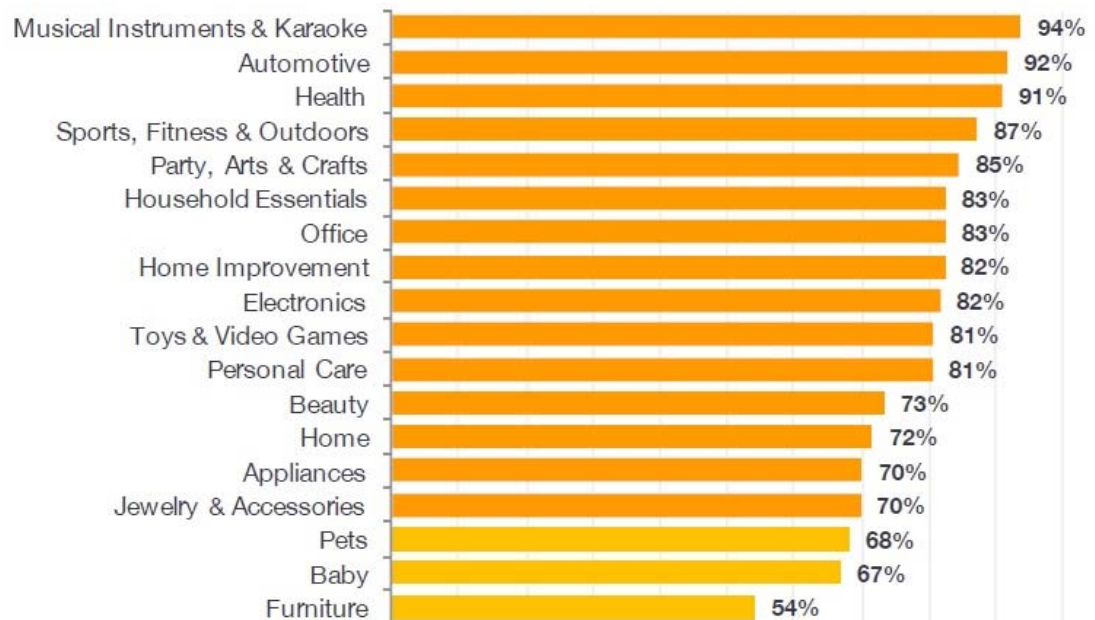
53. Amazon Marketplace has obtained monopoly power in the U.S. retail e-commerce market, as demonstrated by its power to set the prevailing prices of the vast majority of consumer goods offered for sale on the internet and that it exercises extraordinary control over millions of its online retail competitors.

⁷⁹ Lauren Thomas & Courtney Reagan, *Watch out, retailers. This is just how big Amazon is becoming*, CNBC, www.cnbc.com/2018/07/12/amazon-to-take-almost-50-percent-of-us-e-commerce-market-by-years-end.html.

54. Amazon Marketplace dominates online retail sales in numerous product categories. For example, in 2018, tracking the number of online purchases across 100 million devices from 500 different e-commerce retailers and marketplaces, market analyst, Jumpshot, found that Amazon Marketplace had a 97% share of online battery purchases, 94% share of online kitchen and dining product purchases, a 93% share of online home improvement tool purchases, a 92% share of online golf-related product purchases and a 91% share of online skin care product purchases.⁸⁰

55. In a 2019 report, Jumpshot found that Amazon Marketplace had over 50% market share—the presumptive threshold for monopolies—in 18 categories:⁸¹

Amazon Market Share by Top-Level Category



56. Because Amazon Marketplace accounts for over 50% of online sales in the U.S., it has monopoly power in that market. In the alternative, Amazon has minimally obtained monopoly power in the product category submarkets with U.S. online retail markets, where its market share exceeds 50%.

⁸⁰ Amy Gresenhues, *Amazon Owns More Than 90% Market Share Across 5 Different Product Categories [Report]*, Marketing Land (May 31, 2018), <https://martech.org/amazon-owns-more-than-90-market-share-across-5-different-product-categories-report/>.

⁸¹ 2019 Jumpshot report, *Losers Brands and Retailers Who Couldn't Make It Happen in 2018* at 21.

57. Amazon, by conspiracy or combination with its third-party sellers, has willfully acquired its monopoly power in the U.S. retail e-commerce market or these identified U.S. online retail Submarkets through anticompetitive conduct, including enforcement of its MFN agreements, thereby causing supracompetitive prices for Class Products in the U.S. retail e-commerce market. Such conduct is an abuse or attempted abuse of monopoly power in violation of Section 2 of the Sherman Act.

58. If Amazon does not already have a monopoly in the U.S. retail e-commerce market, there is a dangerous probability that it will achieve one because sales on Amazon Marketplace account for nearly half of all retail e-commerce sales in the United States. Alex Sheppard at the New Republic explained a few years ago: “If Amazon now controls the pricing in the book industry, just imagine what it can do in the broader world of retail.”⁸²

59. Amazon’s dominance not only increases online prices, it also reduces consumer choices and prevents more innovative online shopping marketplaces from competing in the United States. “The concept of shopping Amazon built - a search bar with infinite selection - doesn’t have the excitement and inspiration of some of the more modern e-commerce models, especially those in China.”⁸³ For instance, both Amazon and Alibaba use machine learning to recognize patterns in shopping behavior, but whereas Amazon generally limits its suggestions to items similar to the ones the customer previously bought or things that other customers, searching for the same item, also bought, Alibaba provides a much more extensive and innovative list of suggestions.⁸⁴

60. But Amazon Marketplace does not need to innovate to attract or retain its customers. By manipulating online prices through their MFN agreements, Amazon and its third-party sellers create barriers to competition with other existing or potential online marketplace operators that cannot rely on price competition to gain a share of the online retail marketplace market.

⁸² Alex Sheppard, *How Amazon Is Changing the Whole Concept of Monopoly*, New Republic (Jun. 19, 2017), <https://newrepublic.com/article/143376/amazon-changing-whole-concept-monopoly>.

⁸³ *Minimum Viable Amazon*, Marketplace Pulse (Jan. 21, 2021), <https://www.marketplacepulse.com/articles/minimum-viable-amazon>.

⁸⁴ Dashveenjit Kaur, Techwire Asia (Jan. 28, 2021), *China vs. US e-commerce – How they’re very different*, <https://techwireasia.com/2021/01/china-vs-us-e-commerce-how-theyre-very-different/>.

61. Plaintiffs on their own behalf and that of similarly situated consumers, seek monetary recovery and injunctive relief for harm caused by Amazon’s violations of federal antitrust law—harm that persists and will not abate unless Amazon is stopped. When Plaintiffs originally filed this lawsuit, Amazon’s mandatory arbitration clause prevented them from asserting injuries arising from their purchases on Amazon Marketplace. Now that Amazon has changed its policy, Plaintiffs are free to assert such claims, *e.g.*, through the class claims asserted in the related *De Coster* action, where a proposed class of consumers who purchase on Amazon Marketplace also assert Sherman Act claims against Amazon arising from its anticompetitive MFN agreements.⁸⁵ Claims asserted in the current action, however, solely address overcharge injuries that Amazon’s MFN agreements have caused on online retail sites that compete with Amazon Marketplace.

E. Identity of Class Products

62. Amazon injured Plaintiffs and members of the Class (defined below) when they overpaid for products at prices inflated by Amazon’s anticompetitive conduct.

63. As alleged above, Amazon’s MFN agreements with its 2.3 million third-party sellers are not mere policies on paper. Amazon’s massive price-surveillance group, the Competitive Monitoring Team, constantly crawls the internet, globally providing “[REDACTED] price comparisons” and “[REDACTED] price comparisons.”⁸⁶ This allows Amazon to enforce its MFN agreements regularly and aggressively against its sellers to ensure that they are not listing their goods at lower prices on other retail sites.

64. Amazon’s MFN agreements neutralize Amazon’s competition from other online retail marketplace operators (like eBay and Walmart), allowing Amazon to continue to charge supra-competitive fees for the use of its marketplace even if its platform competitors offer lower marketplace fees. That is because third-party sellers incorporate fees into their list prices. Normally, competing marketplaces therefore would have an incentive to lower fees so that third-party sellers would post lower list prices and thereby attract more customers. But Amazon’s MFN agreements prohibit or disincentivize lower list prices on competing marketplaces. These policies thus allow

⁸⁵ *De Coster, et al. v. Amazon.com, Inc.*, 2:21-cv-00693-RSM (W.D. Wash.).

⁸⁶ CAAGLit-AMZ_00213922 at p.2.

1 Amazon to avoid price competition from marketplaces with lower commissions, which protects
 2 Amazon's inflated fees. Competing marketplaces cannot expand to attract more business—and new
 3 marketplaces cannot enter the market to compete—by lowering fees and prices.

4 65. This is consistent with the Germany authority's findings: It concluded that
 5 Amazon's Price Parity Clause had a direct anticompetitive "effect on [competing] Internet
 6 marketplace operators."⁸⁷ The "major competitive parameter—the fees for platform services—
 7 [was] neutralised by the price parity clause, since more favourable fees [could] not be translated
 8 into more favourable prices for final customers."⁸⁸ Amazon's Price Parity Clause therefore created
 9 a "barrier[] to market entry for new competitors and hinder[ed] the expansion of existing
 10 competitors in the [online retail marketplace] market," preventing competing marketplaces "from
 11 establishing a greater reach."⁸⁹

12 66. To qualify as a Class Product, the product must be (i) purchased from a third-party
 13 seller on the eBay or Walmart online retail marketplace, (ii) concurrently offered by Amazon's
 14 third-party sellers on Amazon Marketplace, and (iii) monitored by Amazon as part of its
 15 competitive price monitoring.

16 **F. The Economic Impact of Amazon's Anticompetitive Conduct**

17 67. Amazon's MFN agreements with its third-party sellers suppressed competition and
 18 caused supracompetitive prices. Without the MFN agreements, third-party sellers would have set
 19 lower prices on marketplaces and retail channels that offered lower fees. Consumers buying through
 20 non-Amazon channels would have paid less for goods purchased through these channels.

21 68. As an example, considering an average industry markup of 38.9% on books, music
 22 and video, if it costs the seller \$1 to buy a CD from a distributor, it would charge \$1.39 on its own
 23 website. If the retailer also sells through Amazon and eBay, they would also incur a minimum fee
 24 of 15% from Amazon and 12% from eBay.⁹⁰ To maintain the same markup, the retailer would list
 25 the product on Amazon at \$1.63 and \$1.58 on eBay. Because Amazon requires its third-party seller

26 ⁸⁷ BKartA Decision at 3.

27 ⁸⁸ *Id.*

28 ⁸⁹ *Id.*

⁹⁰ eBay, <https://www.ebay.com/help/selling/fees-credits-invoices/fees-business-sellers?id=4122>.

1 to set its lowest price on Amazon Marketplace, it would sell its CD on all sites for \$1.63. Customers
2 who could buy at a cheaper price outside of Amazon Marketplace overpay by 3.5% on eBay and
3 17.6% on the seller's own website, assuming fees on other marketplaces would remain the same
4 without the MFN agreements in place.⁹¹

5 69. The impact is even more severe due to the MFN agreements' effect on competition
6 between marketplaces. Without Amazon's MFN agreements, marketplaces can compete for
7 business by offering lower fees. This allows third-party sellers to play the marketplaces against
8 each other by setting lower prices on, and drawing more consumers to, the marketplace with the
9 lowest fee. Under Amazon's MFN agreements, other marketplaces' incentive to lower fees does
10 not exist because third-party sellers on those other marketplaces, who also sell on Amazon
11 Marketplace, cannot lower their prices below their price on Amazon's Marketplace. For example,
12 eBay's 12% fee would be even lower if the MFN agreement did not exist, because eBay would
13 have an incentive to lower its fees in order to lower its third-party sellers' prices and make more
14 sales.

15 70. Amazon's MFN agreements also reduce third-party sellers' incentive to sell on
16 another marketplace in addition to Amazon (i.e., "multi-home") at all, both because the agreements
17 prevent sellers from lowering their prices on lower-cost (lower-fee) marketplaces and because the
18 agreements cause other marketplaces to raise their costs (fees) closer to Amazon's. This further
19 reduces price and fee competition.

20 71. The same analysis of the impact of Amazon's price restraint can be applied to each
21 of the principal categories of goods sold on Amazon Marketplace with varying input from
22 Amazon's and eBay's fees and the industry average markup.

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28 ⁹¹ For ease of reference, Plaintiffs have rounded the prices to the nearest cent and the percentages to the nearest
tenth of a percentage. They base their calculations, however, on numbers that are more exact.

Category	Fees		Markup	Own site \$1 cost	Amazon \$1 cost	eBay \$1 cost
	Amazon Fees	eBay Fees				
Books/Music/Video	15%	12.0%	38.9%	\$1.39	\$1.63	\$1.58
Toys & Hobby	15%	9.15%	78.6%	\$1.79	\$2.10	\$1.97
Computer/Consumer Electronics	8%	7.65%	33.3%	\$1.33	\$1.45	\$1.44
Office equipment	12%	4.00%	40.8%	\$1.41	\$1.60	\$1.47
Furniture & Home Furnishings	12%	9.15%	40.8%	\$1.41	\$1.60	\$1.55
Health & Beauty	12%	9.2%	400.0%	\$5.00	\$5.65	\$5.50
Food & Beverage	12%	9.15%	29.9%	\$1.30	\$1.47	\$1.43
Auto & Parts	12%	8.15%	18.7%	\$1.19	\$1.35	\$1.29
Kitchen & Dining	15%	9.15%	80.0%	\$1.80	\$2.12	\$1.98
Home Improvement Tools	15%	9.15%	49.3%	\$1.49	\$1.76	\$1.64
Men's Athletic Shoes	17%	9.2%	150.0%	\$2.50	\$2.99	\$2.75
Skin Care	15%	9.15%	400.0%	\$5.00	\$5.88	\$5.50
Batteries	15%	9.15%	33.3%	\$1.33	\$1.57	\$1.47
Golf	15%	9.15%	62.6%	\$1.63	\$1.91	\$1.79
Cleaning Supplies	15%	9.15%	29.9%	\$1.30	\$1.53	\$1.43
Other	15%	9.2%	80.0%	\$1.80	\$2.12	\$1.98

72. Under this framework, and based on existing fee levels, Amazon's restraint has resulted in an average overcharge across all categories of 15.9 %for products sold on the third-party sellers' own websites and 5.6% for products sold on another online marketplace platform:

Category	Amazon v. Other Two-Sided Platforms	Amazon v. Retailer's Own Website
Books/Music/Video	3.5%	17.6%
Toys & Hobby	6.9%	17.6%
Computer/Consumer Electronics	0.4%	8.7%
Office equipment	9.1%	13.6%
Furniture & Home Furnishings	3.2%	13.6%
Health & Beauty	2.7%	13.0%
Food & Beverage	2.7%	13.0%
Auto & Parts	4.4%	13.6%
Kitchen & Dining	6.9%	17.6%
Home Improvement Tools	6.9%	17.6%
Men's Athletic Shoes	8.8%	19.8%
Average (All Categories)	5.6%	15.9%

Again, these overcharges underestimate the actual impact, because the fees on other marketplaces—and the prices sellers on those other marketplaces would charge as a result—would be lower without Amazon's MFN agreements.

73. This effect on other marketplaces' fees also means that the impact of Amazon's restraint on its third-party sellers and ultimately consumers is not limited to sales by multi-homing Amazon sellers, selling on other online sites. Because Amazon's platform MFN agreements cause supracompetitive marketplace fees throughout the Online Retail Marketplace Market, they artificially increase the cost of doing business for all U.S. online retail marketplace third-party sellers, even if those sellers do not sell on Amazon Marketplace and are not bound by Amazon's MFN agreements. And because marketplace fees are a significant component of the price consumers pay when they purchase from online retail marketplace sellers, Amazon causes Plaintiffs and Class members to overpay not only when they purchase Class Products from Amazon's co-conspiring third-party sellers, but also from non-conspiring third-party sellers on other marketplaces, like eBay and Walmart Marketplace.

74. Amazon's restraint on competition has thus artificially inflated prices for Class Products and directly injured Plaintiffs and Class members, who overpaid for Class Products.

II. JURISDICTION

75. This Court has federal question jurisdiction pursuant to the federal antitrust laws invoked herein, including the Sherman Act and Clayton Antitrust Act, *e.g.*, 28 U.S.C. § 1331, 28 U.S.C. § 1337(a), and 15 U.S.C. § 15(a).

76. This Court also has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Amazon, there are more than 100 Class members nationwide, and the aggregate amount in controversy exceeds \$5,000,000.

77. Plaintiffs are residents of California, Florida, Georgia, Iowa, Maine, Nevada, Pennsylvania, Texas, Vermont, Virginia, Washington, and Wisconsin, who purchased consumer goods online. Plaintiffs were harmed and injured financially because of Defendant's conduct, as described further herein.

78. This Court has personal jurisdiction over Amazon because Amazon has its principal headquarters in Washington, does business in Washington, directly or through agents, and has

1 registered with the Washington Secretary of State such that it has sufficient minimum contacts with
2 Washington.

3 III. VENUE

4 79. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Amazon's principal
5 place of business is in this judicial district, and a substantial part of the events giving rise to the
6 claims occurred in this judicial district.

7 IV. PARTIES

8 A. Plaintiffs

9 80. Deborah Frame-Wilson is a resident of Winchester, Virginia. She regularly shops
10 on U.S. online retail marketplaces that compete with Amazon Marketplace, like Walmart
11 Marketplace. Some products Ms. Frame-Wilson purchased on competing online retail marketplaces
12 are monitored by Amazon as part of its competitive price monitoring and were concurrently
13 available for sale by an Amazon third-party seller on Amazon Marketplace, *i.e.*, Class Products.
14 For example, around early February 2020, Ms. Frame-Wilson purchased a product that Amazon
15 monitors, an Auntie Mame DVD, online from lawbkstore, a third-party seller on Walmart for \$9.99,
16 which was delivered on February 7, 2020. The same product was offered for sale by an Amazon
17 third-party seller from January 24 to February 7, 2020, concurrently with her estimated purchase
18 date. Amazon's anticompetitive price policies caused her to pay an inflated price for the product.
19 Additionally, because she regularly shops on Walmart Marketplace, where Amazon third-party
20 sellers are also likely to sell, and because these sellers agree to Amazon's MFNs, she is likely to be
21 injured in the future. Ms. Frame-Wilson has been injured and will continue to be injured by paying
22 more for Class Products than she would have paid or would pay in the future in the absence of
23 Defendant's unlawful acts, as set forth herein.

24 81. Christian Sabol is a resident of Redondo Beach, California. He regularly shops on
25 U.S. online retail marketplaces that compete with Amazon Marketplace, like Walmart Marketplace.
26 Some products Mr. Sabol purchased on competing online retail marketplaces are monitored by
27 Amazon as part of its competitive price monitoring and were concurrently available for sale by an
28 Amazon third-party seller on Amazon Marketplace, *i.e.*, Class Products. For example, on July 15,

1 2019, he purchased a product that Amazon monitors, a set of BIC Classic Pocket Lighters, assorted
2 colors, 5 ct. online from The Official BIC Store, a third-party seller on Walmart for \$6.49 with no
3 added shipping charge. On May 31, 2020, he purchased Nutrition Now PB8 Probiotic 120 Capsules
4 online from PureFormulas Inc., a third-party seller on Walmart for \$17.33 with no added shipping
5 charge. And on July 30, 2019, he purchased Nutrition Now PB8 Acidophilus for Life Probiotic 120
6 Capsule from Venu, a third-party seller on Walmart for \$14.99 with no added shipping charge. The
7 same products were monitored by Amazon and concurrently offered for sale by Amazon third-party
8 sellers on the dates Mr. Sabol made his purchases on Walmart. Amazon's anticompetitive price
9 policies caused him to pay an inflated price for the products. Additionally, because he regularly
10 shops on Walmart, where Amazon third-party sellers are also likely to sell, and because these sellers
11 agree to Amazon's MFNs, he is likely to be injured in the future. Mr. Sabol has been injured and
12 will continue to be injured by paying more for Class Products than he would have paid or would
13 pay in the future in the absence of Defendant's unlawful acts, as set forth herein.

14 82. Samantha Russell is a resident of Bougeasville, Georgia. She regularly shops on
15 U.S. online retail marketplaces that compete with Amazon Marketplace, like eBay Marketplace.
16 Some products Ms. Russell purchased on competing online retail marketplaces are monitored by
17 Amazon as part of its competitive price monitoring and were concurrently available for sale by an
18 Amazon third-party seller on Amazon Marketplace, *i.e.*, Class Products. For example, on July 24,
19 2017, she purchased a product that Amazon monitors, a Mad Gab Game Mattel Games 10+ 2-12
20 Players CFX4, online from livesincerely, a third-party seller on eBay for \$9.64. The same product
21 was offered for sale by an Amazon third-party seller on July 24, 2017, the same date when Ms.
22 Russell made her purchase. Amazon's anticompetitive price policies caused her to pay an inflated
23 price for the product. Additionally, because she regularly shops on eBay, where Amazon third-
24 party sellers are also likely to sell, and because these sellers agree to Amazon's MFNs, she is likely
25 to be injured in the future. Ms. Russell has been injured and will continue to be injured by paying
26 more for Class Products than she would have paid or would pay in the future in the absence of
27 Defendant's unlawful acts, as set forth herein.

1 83. Sheryl Holly-Taylor is a resident of Ocklawaha, Florida. She regularly shops on
2 U.S. online retail marketplaces that compete with Amazon Marketplace, like eBay. Some products
3 Ms. Holly-Taylor purchased on competing online retail marketplaces are monitored by Amazon as
4 part of its competitive price monitoring and were concurrently available for sale by an Amazon
5 third-party seller on Amazon Marketplace, *i.e.*, Class Products. For example, on September 8, 2018,
6 she purchased a product that Amazon monitors, a Johnson Controls A19AAT-2C Freezer
7 Temperature Controller, online from Lich-king, a third-party seller on eBay for \$68.14. The same
8 product was offered for sale by an Amazon third-party seller on September 8, 2018, the same date
9 Ms. Holly-Taylor made her purchase. Amazon's anticompetitive price policies caused her to pay
10 an inflated price for the product. Additionally, because she regularly shops on eBay, where Amazon
11 third-party sellers are also likely to sell, and because these sellers agree to Amazon's MFNs, she is
12 likely to be injured in the future. Ms. Holly-Taylor has been injured and will continue to be injured
13 by paying more for Class Products than she would have paid or would pay in the future in the
14 absence of Defendant's unlawful acts, as set forth herein.

15 84. Dave Westrope is a resident of Ankeny, Iowa. He regularly shops on U.S. online
16 retail marketplaces that compete with Amazon Marketplace, like eBay. Some products Mr.
17 Westrope purchased on competing online retail marketplaces are monitored by Amazon as part of
18 its competitive price monitoring and were concurrently available for sale by an Amazon third-party
19 seller on Amazon Marketplace, *i.e.*, Class Products. For example, on November 26, 2018, he
20 purchased a product that Amazon monitors, 15A/20A tandem breaker, online from
21 oldschoolelectric8, a third-party seller on eBay for \$15.02. The same product was offered for sale
22 by an Amazon third-party seller on November 26, 2018, the same date Mr. Westrope made his
23 purchase. Amazon's anticompetitive price policies caused him to pay an inflated price for the
24 product. Additionally, because he regularly shops on eBay, where Amazon third-party sellers are
25 also likely to sell, and because these sellers agree to Amazon's MFNs, he is likely to be injured in
26 the future. Mr. Westrope has been injured and will continue to be injured by paying more for Class
27 Products than he would have paid or would pay in the future in the absence of Defendant's unlawful
28 acts, as set forth herein.

1 85. Stacy Dutill is a resident of Waterville, Maine. She regularly shops on U.S. online
2 retail marketplaces that compete with Amazon Marketplace, like Walmart. Some products Ms.
3 Dutill purchased on competing online retail marketplaces are monitored by Amazon as part of its
4 competitive price monitoring and were concurrently available for sale by an Amazon third-party
5 seller on Amazon Marketplace, *i.e.*, Class Products. For example, in approximately early April
6 2019, she purchased a product that Amazon monitors, Manna Pro 5 lb. Sho-Glo Supplement for
7 Horses, online from Hayneedle, a third-party seller on the Walmart website for \$24.26 with no
8 added shipping charge. The product was delivered on April 6, 2019. The same product was offered
9 for sale by an Amazon third-party seller from March 24 to April 6, 2019, concurrently with her
10 estimated purchase date. Amazon's anticompetitive price policies caused her to pay an inflated
11 price for the product. Additionally, because she regularly shops on Walmart, where Amazon third-
12 party sellers are also likely to sell, and because these sellers agree to Amazon's MFNs, she is likely
13 to be injured in the future. Ms. Dutill has been injured and will continue to be injured by paying
14 more for Class Products than she would have paid or would pay in the future in the absence of
15 Defendant's unlawful acts, as set forth herein.

16 86. Sarah Arrington is a resident of Las Vegas, Nevada. She regularly shops on U.S.
17 online retail marketplaces that compete with Amazon Marketplace, like Walmart. Some products
18 Ms. Arrington purchased on competing online retail marketplaces are monitored by Amazon as part
19 of its competitive price monitoring and were concurrently available for sale by an Amazon third-
20 party seller on Amazon Marketplace, *i.e.*, Class Products. For example, on June 19, 2017, she
21 purchased a product that Amazon monitors, the ArtNaturals Aromatherapy Top-16, online from
22 Art Naturals, a third-party seller on Walmart for \$29.95. The same product was offered for sale by
23 an Amazon third-party seller on June 19, 2017, the same date Ms. Arrington made her purchase.
24 Amazon's anticompetitive price policies caused her to pay an inflated price for the product.
25 Additionally, because she regularly shops on Walmart, where Amazon third-party sellers are also
26 likely to sell, and because these sellers agree to Amazon's MFNs, she is likely to be injured in the
27 future. Ms. Arrington has been injured and will continue to be injured by paying more for Class
28

1 Products than she would have paid or would pay in the future in the absence of Defendant's
2 unlawful acts, as set forth herein.

3 87. Heather Geesey is a resident of Dover, Pennsylvania. She regularly shops on U.S.
4 online retail marketplaces that compete with Amazon Marketplace, like eBay. Some products Ms.
5 Geesey purchased on competing online retail marketplaces are monitored by Amazon as part of its
6 competitive price monitoring and were concurrently available for sale by an Amazon third-party
7 seller on Amazon Marketplace, *i.e.*, Class Products. For example, on March 1, 2023, she purchased
8 a product that Amazon monitors, a Samsung Galaxy SmartTag Bluetooth Tracker & Item Locator,
9 online from simplecellllc (290476), a third-party seller on eBay for \$21.15 with no added shipping
10 charge. The same product was offered for sale by an Amazon third-party seller on March 1, 2023,
11 the same date Ms. Geesey made her purchase. Amazon's anticompetitive price policies caused her
12 to pay an inflated price for the product. Additionally, because she regularly shops on the eBay
13 Marketplace, where Amazon third-party sellers are also likely to sell, and because these sellers
14 agree to Amazon's MFNs, she is likely to be injured in the future. Ms. Geesey has been injured and
15 will continue to be injured by paying more for Class Products than she would have paid or would
16 pay in the future in the absence of Defendant's unlawful acts, as set forth herein.

17 88. Chaunda Lewis is a resident of Savannah, Texas. She regularly shops on U.S. online
18 retail marketplaces that compete with Amazon Marketplace, like Walmart. Some products Ms.
19 Lewis purchased on competing online retail marketplaces are monitored by Amazon as part of its
20 competitive price monitoring and were concurrently available for sale by an Amazon third-party
21 seller on Amazon Marketplace, *i.e.*, Class Products. For example, on October 18, 2020, she
22 purchased a product that Amazon monitors, a Funko POP! Star Wars: The Mandalorian - 10"
23 Mandalorian w/The Child, online from Mobile Advance, a third-party seller on Walmart for \$48.99.
24 The same product was offered for sale by an Amazon third-party seller on October 18, 2020, the
25 state date Ms. Lewis made her purchase. Amazon's anticompetitive price policies caused her to pay
26 an inflated price for the product. Additionally, because she regularly shops on Walmart, where
27 Amazon third-party sellers are also likely to sell, and because these sellers agree to Amazon's
28 MFNs, she is likely to be injured in the future. Ms. Lewis has been injured and will continue to be

1 injured by paying more for Class Products than she would have paid or would pay in the future in
2 the absence of Defendant's unlawful acts, as set forth herein.

3 89. Gail Murphy is a resident of Shelburne, Vermont. She regularly shops on U.S. online
4 retail marketplaces that compete with Amazon Marketplace, like Walmart and Etsy. Some products
5 Ms. Murphy purchased on competing online retail marketplaces are monitored by Amazon as part
6 of its competitive price monitoring and were concurrently available for sale by an Amazon third-
7 party seller on Amazon Marketplace, *i.e.*, Class Products. For example, on July 29, 2020, she
8 bought five Mylar Trump Baby Balloons online from GOLDMETALSDEPOT813, a third-party
9 seller on the Etsy website for \$5 each. This is a product that Amazon monitors on the date of her
10 purchase. On October 7, 2018, she bought a product that Amazon monitors, a HP 35S Scientific
11 Calculator Programmable Calculator, online from DealsClick, a third-party seller on Walmart for
12 \$55.18. The same products were offered for sale by Amazon third-party sellers on the same dates
13 Ms. Murphy made her purchases. Amazon's anticompetitive price policies caused her to pay an
14 inflated price for the products. Additionally, because she regularly shops on Walmart and Etsy,
15 where Amazon third-party sellers are also likely to sell and because these sellers agree to Amazon's
16 MFNs, she is likely to be injured in the future. Ms. Murphy has been injured and will continue to
17 be injured by paying more for Class Products than she would have paid or would pay in the future
18 in the absence of Defendant's unlawful acts, as set forth herein.

19 90. Phyllis Huster is a resident of Bellevue, Washington. She regularly shops on U.S.
20 online retail marketplaces that compete with Amazon Marketplace, like eBay. Some products Ms.
21 Huster purchased on competing online retail marketplaces are monitored by Amazon as part of its
22 competitive price monitoring and were concurrently available for sale by an Amazon third-party
23 seller on Amazon Marketplace, *i.e.*, Class Products. For example, on August 19, 2018, she
24 purchased a product that Amazon monitors, the Fractal Geometry of Nature, online from
25 book_outlet (2305), a third-party seller on eBay for \$30.81 with no added shipping charge. The
26 same product was offered for sale by an Amazon third-party seller on August 19, 2018, the same
27 date Ms. Huster made her purchase. Amazon's anticompetitive price policies caused her to pay an
28 inflated price for the product. Additionally, because she regularly shops on eBay, where Amazon

1 third-party sellers are also likely to sell and because these sellers agree to Amazon's MFNs, she is
2 likely to be injured in the future. Ms. Huster has been injured and will continue to be injured by
3 paying more for Class Products than she would have paid or would pay in the future in the absence
4 of Defendant's unlawful acts, as set forth herein.

5 91. Gerry (Chip) Kochendorfer is a resident of Eau Claire, Wisconsin. He regularly
6 shops on U.S. online retail marketplaces that compete with Amazon Marketplace, like Walmart.
7 Some products Mr. Kochendorfer purchased on competing online retail marketplaces are monitored
8 by Amazon as part of its competitive price monitoring and were concurrently available for sale by
9 an Amazon third-party seller on Amazon Marketplace, *i.e.*, Class Products. For example, on
10 November 1, 2017, he purchased a product that Amazon monitors, a Snow Joe Ultra 18 Inch 15
11 Amp Single Stage Electric Snow Thrower with Headlights, online from VMInnovations, a third-
12 party seller on Walmart for \$172.28 with no added shipping charge. The same product was offered
13 for sale by an Amazon third-party seller on November 1, 2017, the same date Mr. Kochendorfer
14 made his purchase. Amazon's anticompetitive price policies caused him to pay an inflated price for
15 the product. Additionally, because he regularly shops on Walmart, where Amazon third-party
16 sellers are also likely to sell, and because these sellers agree to Amazon's MFNs, he is likely to be
17 injured in the future. Mr. Kochendorfer has been injured and will continue to be injured by paying
18 more for Class Products than he would have paid or would pay in the future in the absence of
19 Defendant's unlawful acts, as set forth herein.

20 **B. Defendant**

21 92. Amazon is an online retailer giant with its principal headquarters in Seattle,
22 Washington. Amazon sells directly to its retail customers on Amazon Marketplace. Amazon also
23 maintains Amazon Marketplace, a platform for its two-million third-party sellers, who also sell on
24 Amazon Marketplace. Amazon contractually obligates its third-party sellers to adhere to the pricing
25 policies challenged in this lawsuit.

26 93. Amazon's third-party sellers' registration is handled on Amazon Marketplace,
27 where Amazon also has maintained the agreements with its third-party sellers relevant to this
28 lawsuit. It is believed, and therefore alleged, that substantially all of the misconduct alleged in this

complaint occurred in or emanated from Amazon's headquarters and principal place of business in Seattle, Washington.

V. STATEMENT OF FACT

A. Background

1. Amazon is a powerful market participant in online retail sales and marketplaces.

94. Amazon, the largest retailer in the U.S., is also the world's largest platform for third-party retailers, with whom Amazon competes in the sale of consumer retail goods.

95. The U.S. House Subcommittee on antitrust concluded that "Amazon functions as a gatekeeper for ecommerce."⁹² Further, "Amazon has monopoly power" over most third-party sellers that feel they "cannot turn to alternative marketplaces, regardless of how much Amazon may increase their costs of doing business or how badly they are treated."⁹³

96. Additionally, it found that "Amazon also enjoys significant market power over online consumers" that "is durable and unlikely to erode in the foreseeable future."⁹⁴ This durable market power reflects significant barriers to entry that include: "(1) network effects, which make it difficult for another marketplace to achieve a comparable number of buyers and sellers; (2) switching costs associated with consumers shopping outside of the Amazon ecosystem; and (3) the steep costs of building a logistics network comparable in size and scope to Amazon's massive international footprint in fulfillment and delivery."⁹⁵

97. From the third-party retailers' perspective, Amazon Marketplace is like Hotel California, a lovely place to start or expand an online retail business, but check out from Amazon Marketplace and you can quickly find your business in bankruptcy. For example, Molson Hart, who sells toys on Amazon reports: "Were we to be suspended from selling on Amazon.com, it would probably take 3–6 months before we'd be bankrupt. We are not alone. This is typical for

⁹² House Report at 256.

⁹³ *Id.* at 257.

⁹⁴ *Id.* at 259-60.

⁹⁵ *Id.* at 260.

1 small to medium sized businesses which sell online today. In fact, most companies like our own,
2 would probably go bust even faster.”⁹⁶

3 98. For the many third-party sellers, Amazon’s 105 million U.S. Prime members are a
4 big incentive to selling on Amazon Marketplace because these consumers are frequent online
5 shoppers and likely to spend significant funds on Amazon Marketplace.⁹⁷ Prime membership is a
6 paid subscription service with Amazon’s retail customers, which entitles them to benefits, including
7 free two-day shipping on Prime products.⁹⁸ According to a survey, 96% of all Prime members are
8 more likely to buy products from Amazon Marketplace than any other e-commerce site.⁹⁹ An
9 estimated 20% of Amazon Prime members shopped on Amazon a few times per week, and 7% did
10 so almost daily.¹⁰⁰ U.S. Prime members spend an average of \$1,400 per year on Amazon
11 Marketplace.¹⁰¹ By selling on Amazon Marketplace, third-party sellers that qualify as Prime sellers
12 have access to a uniquely large and highly motivated consumer group.

13 99. Amazon collects payment on Amazon Marketplace for three categories of retail
14 sales: (1) first-party sales where Amazon sells at retail products that it sources wholesale from a
15 vendor or manufacturer (43% of all goods sold on Amazon Marketplace); (2) first-party sales of its
16 own private-label products (1% of all goods sold on Amazon Marketplace) or (3) third-party sales
17 where third-party sellers sell their products through Amazon and Amazon takes a commission (61%
18 of all goods sold on Amazon Marketplace).¹⁰²

19 ⁹⁶ *Supra* Hart.

20 ⁹⁷ *Number of Amazon Prime members in the United States as of June 2019*, Statista, <https://www.statista.com/statistics/546894/number-of-amazon-prime-paying-members/>.

21 ⁹⁸ *Id.*

22 ⁹⁹ Kiri Masters, *89% Of Consumers Are More Likely To Buy Products From Amazon Than Other E-Commerce Sites: Study*, Forbes (Mar. 20, 2019), <https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/#452623b04af1>.

23 ¹⁰⁰ *Supra* Number of Amazon Prime members in the United States as of June 2019.

24 ¹⁰¹ Average annual amount spent on Amazon according to U.S. Amazon Prime and non-Prime members as of March 2019, Statista, <https://www.statista.com/statistics/304938/amazon-prime-and-non-prime-members-average-sales-spend/>.

25 ¹⁰² Lesley Hensell, Amazon Sellers Are Losing Control of Pricing Due to “Standards for Brands, Webretailer, Nov. 8, 2021, <https://web.archive.org/web/20220518023851/https://www.webretailer.com/b/amazon-standards-for-brands/> (last visited April 25, 2024); *see also* Amazon Percent of Units by Marketplace Sellers 2004-2023, Marketplace Pulse, <https://www.marketplacepulse.com/stats/amazon/amazon-percent-of-units-by-marketplace-sellers-1> (estimating that third-party sellers’ sales account for 61% of sales on Amazon Marketplace) (last visited April 25, 2024); Aaron Cheris, Darrell Rigby & Suzanne Tager, *Dreaming of an Amazon Christmas*, BAIN & CO. (Nov. 9, 2017), <https://www.bain.com/insights/retail-holiday-newsletter-2017-issue-2/> (estimating that Amazon’s private label products are 2% of its first-party sales) (last visited Mar. 3, 2022).

100. By extending its virtual marketplace to include hundreds of millions of more unique products through third-party sellers, no other retailer or retail marketplace can match Amazon Marketplace's ability to provide products for virtually every imaginable search.¹⁰³ In Amazon's own words, "allowing third parties to offer products side-by-side" with Amazon's own catalog of at least 12 million products, makes Amazon "more attractive to customers," which draws "even more sellers" and adds to Amazon's "economies of scale[.]"¹⁰⁴

101. Amazon's vast infrastructure, such as its inventory management, fulfillment, return processing, and advertising, gives it the capacity to compete in every product category permitted on its marketplace.¹⁰⁵ This allows Amazon to easily enter competition with any category of good sold on its marketplace.

102. Amazon's accumulation of customer and seller data also gives it the capacity to compete with any third-party seller. A former Amazon employee interviewed by the House subcommittee on antitrust explained:

It's important to understand that Amazon has access to every piece of data on what products each customer has searched and purchased [or] not purchased. . . . With information about what customers have searched, Amazon is able to create customized marketing [and] targeting of products for the individual customer. "Is Amazon using a particular [third-party] seller's data here? No," but it is using all of the aggregate site data to develop a highly targeted marketing plan for each customer. Should Amazon choose to use that targeting information to focus [on] its own products, it can, while [third-party] sellers don't have access to similar data."¹⁰⁶

103. But the ability to compete more effectively as a retailer against its third-party sellers is not the only advantage Amazon's data gives it. Research by Google suggests that the ability for a seller to present its offers in a personalized setting is a valuable one, and that consumers are 40%

¹⁰³ *Supra* Minimum Viable Amazon.

¹⁰⁴ Amazon 2014 Annual Report, EX-99.1 (sec.gov), <https://www.sec.gov/Archives/edgar/data/1018724/000119312515144741/d895323dex991.htm>.

¹⁰⁵ Adam Levy, *Amazon's Third-Party Marketplace Is Worth Twice as Much as Its Own Retail Operations*, Motley Fool (Apr. 11, 2019), <https://www.fool.com/investing/2019/03/07/amazons-third-party-marketplace-is-worth-twice-as.aspx> (last visited Mar. 3, 2022).

¹⁰⁶ House Report at 268.

1 more likely to spend more than they planned when in a personalized setting.¹⁰⁷ Amazon's data
 2 collection allows it to sell to its third-party sellers highly effective, personalized advertising that is
 3 tailored to each of Amazon's consumer customers. This data advantage has allowed Amazon to
 4 become the third-biggest digital advertising company behind Google and Facebook, hitting \$31
 5 billion in ad revenue in 2021.¹⁰⁸

6 104. Amazon third-party sellers do not need MFN agreements to sell goods online, nor
 7 does Amazon need them to operate an online retail marketplace. eBay, for example, provides a very
 8 similar online retail marketplace, which, like Amazon Marketplace, transacts sales between
 9 consumers and third-party sellers, but without imposing MFN agreements. And German antitrust
 10 authorities investigating Amazon Marketplace (discussed below) found that Amazon's Price Parity
 11 Clause "cannot be seen" as "an indispensable restriction" on its third-party sellers, but rather, as a
 12 restriction to protect "Amazon's large own-account [*i.e.*, first-party] share of sales as a
 13 competitor."¹⁰⁹ In a competitive market, third-party sellers would list their goods at lower prices on
 14 other platforms that charged lower (or no) fees,¹¹⁰ and—facing price competition from third-party
 15 sellers—Amazon would also have to lower its own retail prices to compete.

16 **2. German competition authorities found that Amazon's Price Parity restricted**
 17 **competition both as a horizontal price fixing agreement with its third-party**
 18 **sellers and by erecting a barrier to competition with Amazon Marketplace**
 19 **from other online retail marketplaces.**

20 105. Amazon's first known MFN agreement, the Price Parity Clause, introduced in the
 21 U.S. in 2004, drew international scrutiny from antitrust regulators.¹¹¹ Regulators in the U.K. and
 22 Germany concurrently launched investigations into the anticompetitive effects of Amazon's Price
 23 Parity. With a 30-40% share of the market for the online sales of goods in Germany at the time of
 24 the enforcement action, Amazon's marketplace had a lower market share than it currently has in

25 ¹⁰⁷ <https://www.thinkwithgoogle.com/consumer-insights/consumer-trends/personalized-shopping-spending-statistics/>.

26 ¹⁰⁸ Here's the latest on Amazon's \$31 billion ad business, which continues to grow despite the economic upheaval, Business Insider (Dec 27, 2022), <https://www.businessinsider.com/inside-amazons-growing-ad-business-everything-we-know-2019-5?r=US&IR=T>.

27 ¹⁰⁹ BKartA Decision at 3.

28 ¹¹⁰ *Supra* Hart.

¹¹¹ CAAGLit-AMZ_03853422 (Aug. 24, 2010 letter from Amazon EU SARL to UK Office of Fair Trading) at p.21.

1 the United States. Nevertheless, the German antitrust authority took action against Amazon for “the
 2 so-called price parity clause,” also alleged here, which “largely prevented sellers on Amazon’s
 3 Marketplace platform from offering their goods elsewhere online at a lower price,” whether on
 4 “other e-commerce platforms” or on their “own online shops.”¹¹²

5 106. Upon investigation, the German authority concluded that Amazon’s MFN
 6 agreements had the stark anticompetitive effect that economic literature predicts: reduced
 7 competition and higher prices. Because Amazon’s MFN agreements ensure a uniform, all-in price
 8 to the end consumer, the “[p]rice parity clauses thus act as barriers to market entry for new
 9 competitors and hinder the expansion of existing competitors in the market” for online retail
 10 marketplace platforms by “neutrali[zing]” the “major competitive parameter – the fees for platform
 11 services – . . . more favourable fees cannot be translated into more favourable prices for final
 12 customers.”¹¹³ The inevitable result is higher prices, fewer consumers, and fewer online retail
 13 marketplaces entering the market to compete against Amazon. “According to a poll of 2,500 online
 14 retailers carried out by” the German authority, the Price Parity “has also resulted in significant price
 15 increases to e-commerce.”¹¹⁴

16 107. As a result of the German authority’s findings, as well as coordinated efforts by the
 17 U.K.’s Office of Fair Trading, Amazon ultimately abandoned its Price Parity in 2013 throughout
 18 the EU.

19 108. The Japan Fair Trade Commission reached virtually the same conclusions about the
 20 Price Parity Clause, which resulted in Amazon removing the parity provisions in that market in
 21 June 2017. It found that Amazon’s “price parity clauses . . . negatively affect competition” by
 22 “limiting [sellers’] reduction of prices . . . via other sales channels[;] distorting competition among
 23 online shopping mall operators by . . . imposing those parity clauses to achieve the lowest price . . .
 24 of goods sold in its online shopping mall without making any competitive effort;” reducing “online
 25 shopping mall operators’ incentive for innovation;” and hindering “new entrants as the reduction
 26

27 ¹¹² BKartA Decision at 1-2.

28 ¹¹³ BKartA Decision at 3.

¹¹⁴ *Id.*

1 of fees charged by an online shopping mall operator for sellers does not result in these sellers'
2 reduction of prices[.]”¹¹⁵

3 109. In the United States, however, Amazon has continued to employ its MFN
4 agreements to the detriment of Plaintiffs and the Class.

5 **3. Amazon charges high seller fees that raise online prices of consumer goods on**
6 **and off Amazon Marketplace.**

7 110. Because of the fees it charges its third-party sellers, Amazon Marketplace is hugely
8 profitable for Amazon. Amazon’s profit margin on its seller service fees is significantly higher than
9 the margin on its own retail sales on Amazon Marketplace.¹¹⁶ Amazon takes a significant
10 percentage of each sale by its third-party sellers plus additional charges to store and ship the
11 inventory of the sellers that use the FBA service.¹¹⁷ Because of this, financial analysts at Evercore
12 ISI recently valued Amazon’s third-party services at more than \$250 billion, while giving its in-
13 house retail operations a value of just \$120 billion¹¹⁸

14 111. The retailer’s relationship with Amazon begins with a modest \$40 registration fee
15 that lets it reach 95 million unique visitors per month in the United States.¹¹⁹ But sellers “have to
16 play by Amazon’s rules. And remember: Amazon.com isn’t just a marketplace--it’s also a
17 seller[.]”¹²⁰ Amazon charges a commission (“referral fees”) for each item sold on their platform,
18 typically around 15%.¹²¹ Amazon also charges a per-item fee or a monthly subscription and it
19 charges the seller the lesser of \$5 or 20% of the price as a fee for any refunds when a shopper
20 returns the product.¹²² Optionally, and for an additional fee, under FBA, Amazon will store, pick,

21 ¹¹⁵ Japan Fair Trade Commission, “Closing the Investigation on the Suspected Violation of the Antimonopoly Acts
22 by Amazon Japan G. K.”, June 1, 2017 (“Japan Fair Trade Commission Press Release”), www.jftc.go.jp/en/pressreleases/yearly-2017/June/170601.html.

23 ¹¹⁶ Adam Levy, *Amazon’s Third-Party Marketplace Is Worth Twice as Much as Its Own Retail Operations*, Motley
24 Fool (Apr. 11, 2019), <https://www.fool.com/investing/2019/03/07/amazons-third-party-marketplace-is-worth-twice-as.aspx>.

25 ¹¹⁷ *Id.*

26 ¹¹⁸ *Id.*

27 ¹¹⁹ Amazon Services Registration Page, https://services.amazon.com/sem-landing.html?ref=pd_sl_2thvswwc79_b&hvdev=c&ld=SEUSSOABING-B20000SC-D&hvadid=78615157546872&hvqmt=p&tag=mh0b-20&hvbmt=bb.

28 ¹²⁰ *Supra* Sullivan.

¹²¹ Brian Connolly, *Amazon FBA Fees: How Much Does it Cost to Sell on Amazon in 2024?*, Jungle Scout (Apr. 12, 2024), <https://www.junglescout.com/blog/amazon-fba-fees/>.

¹²² *Id.*

1 pack, ship orders, and manage customer service and returns. Sellers who enroll in FBA qualify for
 2 Amazon Prime and free shipping eligible orders, otherwise most sellers must join a waitlist to join
 3 Seller Fulfilled Prime, which commits sellers to fulfill orders with two-day delivery at no additional
 4 charge for Prime customers.¹²³ Accepting FBA services also greatly increases the likelihood that
 5 Amazon's algorithm will select the seller's product for the coveted Amazon Buy Box.¹²⁴
 6 Meanwhile, sellers' enrollment in FBA is a win for Amazon, who never takes title to the third-party
 7 seller's inventory,¹²⁵ yet enjoys a steady revenue from its sellers, who do all the merchandising and
 8 take on the inventory risk.¹²⁶

9 112. Unlike subscription fees to access the platform, sellers do not pay referral fees up-
 10 front, but instead Amazon takes them out of the sellers' account with Amazon after they make the
 11 sale. And Amazon charges higher referral fees for those item categories where it has a significant
 12 dominance in the e-commerce market, *i.e.*, kitchen and dining products, home improvement tools,
 13 batteries, golf, skin care, cleaning supplies, books, music, and videos, and men's athletic shoes.¹²⁷

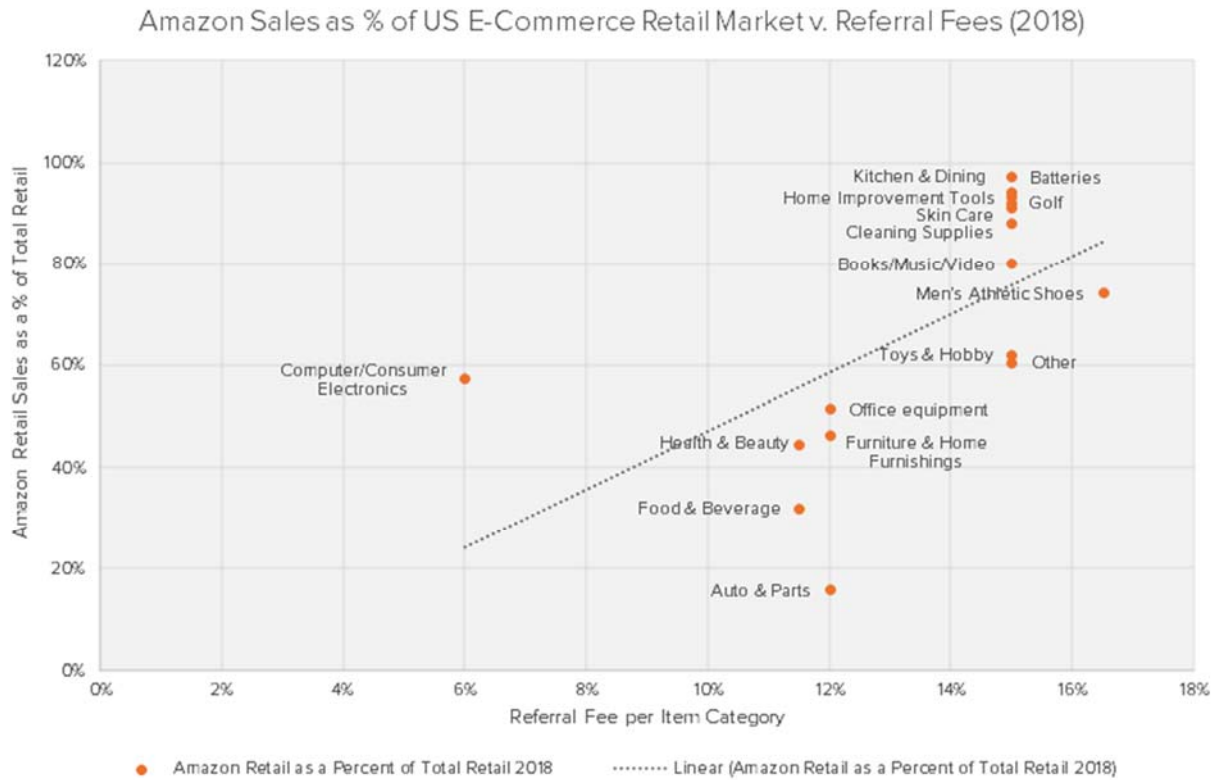
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23 ¹²³ *Amazon FBA: Fulfillment services for your ecommerce business*, Amazon Seller Central, <https://sell.amazon.com/fulfillment-by-amazon>; *Sell products with the Prime branding directly from your warehouse*, Amazon Seller Central, <https://services.amazon.com/services/seller-fulfilled-prime.html>.

24 ¹²⁴ *Supra* Sullivan.

25 ¹²⁵ Irwin Decl., ¶ 5.

26 ¹²⁶ Daphne Howland, *Amazon Caves on Seller Pricing*, Retail Dive (Mar. 13, 2019), <https://www.retaildive.com/news/amazon-caves-on-seller-pricing/550388/>.

27 ¹²⁷ Dave Hamrick, *Amazon FBA Fees, How They Work, and How to Profit as a Seller*, Jungle Scout, (Feb 7, 2020) <https://web.archive.org/web/20200717183616/https://www.junglescout.com/blog/amazon-fba-fees/#all-fees,%20https://www.emarketer.com/content/top-10-us-ecommerce-companies-in-2018>; Corey McNair, *Top 10 US Ecommerce Companies in 2018*, eMarketer (Sep. 17, 2018), <https://www.emarketer.com/content/top-10-us-ecommerce-companies-in-2018>



Higher fees make it more difficult and costly for third-party sellers to compete with Amazon in these categories of goods. This gives Amazon an immense competitive advantage over its third-party sellers on and off Amazon Marketplace in areas where it already dominates and it magnifies Amazon's already formidable power to control market prices, especially in the categories of goods where it has the most market share.

113. The fees Amazon charges make it difficult to compete on Amazon Marketplace in any category. "Every year it's been a ratchet tighter," said Bernie Thompson, a top seller of computer accessories whom Amazon has highlighted in its marketing to other sellers. "Now you are one event away from not functioning."¹²⁸ Between 2015 and 2018, Amazon's revenue from third-party seller fees grew from \$16 billion to \$43 billion, outpacing both the overall growth of Amazon's retail sales, and the growth of sales made by third-party sellers on Amazon Marketplace.¹²⁹

¹²⁸ Karen Weise, *Prime Power: How Amazon Squeezes the Businesses Behind Its Store*, NYT (Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html>.

¹²⁹ *Supra* Mitchell.

114. “Amazon collects 27 cents of each dollar customers spend buying things its sellers sell, a 42 percent jump from five years ago, according to Instinet, a financial research firm. That does not include what companies pay to place ads on Amazon, a business that Wall Street considers as valuable as Nike.”¹³⁰

115. On-platform advertising is another cost that sets Amazon apart from other platforms. Amazon is the third largest provider of digital advertising, behind only Google and Facebook.¹³¹ Investors expect its \$10 billion advertising sales¹³² to jump \$28.4 billion over the next five years.¹³³ (By comparison, Walmart’s ad offerings to its third-party sellers are at the nascent stage.¹³⁴) According to John Denny, who ran e-commerce for the drink company Bai, companies used to believe that if they had a great product, it would show up in Amazon’s search results, and sales would follow. “Those days are over,” Mr. Denny said. “There are no lightning strikes on Amazon anymore.”¹³⁵ Paid advertising works much like Google search ads.¹³⁶ When customers conduct a search on Amazon Marketplace, they receive a combination of organic results (based on relevance) and sponsored listings (results given to consumers because the brand or seller paid for a specific search term).¹³⁷ In other words, Amazon rewards its advertisers by dedicating more search space to sponsored advertising instead of organic search results, meaning that advertised products have priority over results based on customer satisfaction.¹³⁸ For many Amazon sellers, placing advertisements on Amazon Marketplace is necessary to getting or maintaining a high ranking on

¹³⁰ *Supra* Weise.

¹³¹ Eugene Kim, *Amazon quietly removes promotions of its own products as calls for tech regulation escalate*, NBC (Apr. 3, 2019), https://www.nbcnews.com/tech/tech-news/amazon-quietly-removes-promotions-its-own-products-calls-tech-regulation-n990666?cid=public-rss_20190410.

¹³² Nicole Perrin, *Amazon Advertising 2019. Growth and Performance Are Strong at the No. 3 US Digital Ad Seller*, Emarketer (Nov. 7, 2019), <https://www.emarketer.com/content/amazon-advertising-2019>.

¹³³ Lara O’Reilly and Laura Stevens, *Amazon.com: Emerges as Advertising Giant*, Market Screener, (Nov. 27, 2018), <https://www.wsj.com/articles/amazon-with-little-fanfare-emerges-as-an-advertising-giant-1543248561/>.

¹³⁴ Tara Johnson, *Selling on Walmart: Vendor vs. Third Party vs. Hybrid*, Tinuiti (JUN 26, 2020), <https://tinuiti.com/blog/walmart/selling-on-walmart-vendor-vs-third-party-vs-hybrid/>.

¹³⁵ *Supra* Weise.

¹³⁶ Margot Whitney, *Complete Beginner’s Guide to Advertising on Amazon*, WORDSTREAM (November 20, 2023), <https://www.wordstream.com/blog/ws/2017/09/11/amazon-advertising>.

¹³⁷ The Badger, *Organic vs Paid Search on Amazon [Infographic]*, Adbadger (Mar. 19, 2019), <https://www.adbadger.com/blog/organic-vs-paid-search-amazon/>.

¹³⁸ *Supra* Hart.

1 the platform. That means that Amazon's third-party sellers must pay more money to sell the same
 2 products. For example, on a \$150 product, Amazon charges Molson Hart's company a \$17.58
 3 advertising fee to appear in Amazon's search results.¹³⁹

4 116. "It's increasingly pay-to-play," said Melissa Burdick, a 10-year Amazon veteran
 5 who now advises major consumer brands.¹⁴⁰ Quartile tested the importance of on-platform ads in
 6 2018 when it stopped running ads on Amazon for 750 popular products and found that sales shrank
 7 by 24%.¹⁴¹ The effect only increased over time. After 10 weeks, sales of the products without ads
 8 had tumbled 55%.¹⁴²

9 117. Amazon also charges sellers fees for some types of customer reviews.¹⁴³ All of these
 10 added fees mean that sellers' prices go up on Amazon Marketplace, and by virtue of Amazon's
 11 pricing policies, other platform as well. Some third-party sellers report giving Amazon 40% or
 12 more for each transaction, an increase from 20% just a few years ago.¹⁴⁴

13 118. Market analyst Simeon Siegel notes that "although every unit sold through 3P . . .
 14 comes at lower reported revenue[,] . . . the collected fees flow through at much higher margin rates,"
 15 meaning that Amazon's gross margin continues to grow even when selling fewer of its own
 16 goods.¹⁴⁵ For example, Amazon generated \$43 billion in third-party seller service revenues in 2018,
 17 which accounted for the second-largest revenue segment of the online retail platform, after
 18 Amazon's own retail product sales.¹⁴⁶

19 119. Collectively, the seller fees Amazon charges are substantial and built into the prices
 20 its sellers charge their customers for products purchased on Amazon Marketplace. Because
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22 ¹³⁹ *Id.*

23 ¹⁴⁰ *Supra* Weise.

24 ¹⁴¹ *Id.*

25 ¹⁴² *Id.*

26 ¹⁴³ *Id.*; *What is the Early Reviewer Program?* Amazon, <https://www.amazon.com/gp/help/customer/display.html?nodeId=202094910>.

27 ¹⁴⁴ *Supra* Amazon Squeezes Sellers That Offer Better Prices on Walmart.

28 ¹⁴⁵ *Supra* Howland.

¹⁴⁶ J. Clement, *Percentage of paid units sold by third-party sellers on Amazon platform as of 4th quarter 2019*, Statista (Jan. 31, 2020), <https://web.archive.org/web/20200310211521/https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/>.

Amazon's pricing policies do not permit its sellers to sell at lower prices on other platforms, these fees are also baked into the prices they offer on other platforms through Amazon's aggressive enforcement of its price restraint. To ensure compliance, Amazon's "automated system continually checks and informs the seller within 15 minutes if a violation has occurred."¹⁴⁷ If Amazon finds that a seller violated this restraint, it issues a policy warning in the seller's central account.¹⁴⁸ Violations could result in removal of the seller's product listing or suspension of the seller's account.¹⁴⁹ It was reported that "Amazon even checks [the seller's] listings for similar products that are differently described, by color or size, for example. In other words, there's no hiding place."¹⁵⁰ Jarvin Karnani, who has been selling on Amazon Marketplace for two years, told the FTC, "[I]f Amazon suspends you, it's like a death knell . . . [W]hen Amazon shuts you off, they sit on your money for 90 days and there's nothing you can do."¹⁵¹ To ensure compliance with Amazon's price policies, some sellers have come to rely on an external service to replicate their prices across multiple marketplaces.¹⁵²

4. Amazon knowingly manipulates online prices through its MFN agreements despite warnings from antitrust regulators about their anticompetitive effect.

120. "A staggering number (82%) of consumers cited price as a very important factor when buying a product on Amazon."¹⁵³ But Amazon's MFN agreements have the effect of *reducing* price competition. Third-party sellers, who would have sold their products for less, for example, on

¹⁴⁷ Rupert Heather, *The Little-Known Amazon Pricing Rule that Would Burn Your Business*, Xsellco, <https://www.xsellco.com/resources/amazon-pricing-rule-burn-business/>.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Supra* Heather.

¹⁵¹ Spencer Soper & Ben Brody, *Amazon Probed by U.S. Antitrust Officials Over Marketplace*, Bloomberg (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>.

¹⁵² *Supra* Heather.

¹⁵³ Catie Grasso, *Amazon Pricing Strategy: How Much Should You Sell a Product For?*, Feedadvisor (Jan. 31, 2020), <https://feedvisor.com/resources/marketplace-fees-policies/amazon-pricing-strategy/>.

1 their own websites (e.g., by avoiding Amazon’s estimated 15% fee),¹⁵⁴ were prevented from selling
2 at lower prices.¹⁵⁵

3 121. Amazon came under fire for its Price Parity Clause in December 2018, when Senator
4 Blumenthal called for an FTC investigation of the practice.¹⁵⁶ As noted, Amazon withdrew this
5 very practice in Europe years before under pressure from British and German regulators.¹⁵⁷ In
6 response to the Blumenthal letter, Amazon also quietly withdrew its Price Parity Clause in the U.S.
7 in March of 2019.¹⁵⁸ At the time, Dani Nadel, president of Feedvisor, a company that advises
8 Amazon sellers, expected it to be a watershed moment that would lead “the greater e-commerce
9 landscape” to be “much more dynamic.”¹⁵⁹ Likewise, David Simnick, co-founder and CEO of
10 Soapbox, a Washington, D.C.-based soap and shampoo maker that sells on Amazon, reported that
11 when he learned that Amazon was revoking its Price Parity Clause, “I almost did a back flip in the
12 hotel gym.”¹⁶⁰

13 122. But the watershed moment never came. Amazon continues to punish retailers who
14 price lower on other sites.¹⁶¹ Despite Amazon’s official withdrawal of the Price Parity Clause in
15 the United States in 2019, the Feedadvisor website reported the following year that “many sellers
16 are still operating by the price parity rule *in fear that their account will be impacted as a result.*”¹⁶²

17 123. Like the former Price Parity Clause, Amazon’s current MFN agreements penalize
18 sellers who sell their products at a higher price on Amazon Marketplace by removing the product

19 ¹⁵⁴ What it costs to sell on Amazon in 2018, Xsellco, <https://web.archive.org/web/20180727232848/https://www.xsellco.com/resources/amazon-seller-fees-2018/>; *supra*
20 Hart (“Amazon takes a 15% commission on every product we sell on their website. We don’t have this fee when we
21 sell toys on our own website, so we could sell our products for 15% less and make roughly the same amount of money
as we do on Amazon.”).

22 ¹⁵⁵ Letter from Senator Richard Blumenthal to Josephs Simons, Federal Trade Commission Chair (Dec. 19, 2018),
<https://www.blumenthal.senate.gov/imo/media/doc/12.19.18%20-%20DOJ%20-%20Price%20Parity.pdf>.

23 ¹⁵⁶ *Id.*

24 ¹⁵⁷ *Id.*

25 ¹⁵⁸ Catherine Shu, *Amazon Reportedly Nixes Its Price Parity Requirement for Third-Party Sellers in the U.S.*, Tech
Crunch (Mar. 11, 2019), <https://techcrunch.com/2019/03/11/amazon-reportedly-nixes-its-price-parity-requirement-for-third-party-sellers-in-the-u-s/>.

26 ¹⁵⁹ *Supra* Howland.

27 ¹⁶⁰ Guadalupe Gonzalez, *You’re No Longer Required to Sell Products for Less on Amazon. The Problem? If You
Don’t, You’ve Got Another Penalty Coming*, INC. (Mar. 13, 2019), <https://www.inc.com/guadalupe-gonzalez/amazon-removes-price-parity-not-fair-price-rule-third-party-sellers-antitrust-violations.html>.

28 ¹⁶¹ *Supra* Hart; Gonzalez.

¹⁶² *Supra* Amazon Pricing Strategy: How Much Should You Sell a Product For? (emphasis added).

1 from the Buy Box, suspending shipping options, and terminating selling privileges.¹⁶³ Outside the
 2 Buy Box, products are overlooked by algorithms determining which products shoppers see on the
 3 platform.¹⁶⁴

4 124. When Amazon discovers that an external seller offers the same product on another
 5 site at a lower price, it sends a pricing alert that warns the seller that its product is no longer eligible
 6 for the Buy Box. The effect is chilling for most third-party sellers, who cannot afford to jeopardize
 7 their sales on Amazon by offering better deals on other sites.¹⁶⁵ Jason Boyce, a former Amazon
 8 third-party seller, who now runs a consulting firm, Avenue 7 Media, instructs clients to offer the
 9 same prices on all sites to avoid losing prominence on Amazon even if they can afford to sell for
 10 less on other sites. He explains: “Amazon is in control of the price, not the merchant.”¹⁶⁶

11 125. For example, retailer David Simnick reports that his sales plunge as much as 40 or
 12 50 percent a day when his listings lose the Buy Box, and that he can reclaim the Buy Box only if
 13 he tweaks its pricing either at Amazon Marketplace or at the cheaper retailer, so that both offerings
 14 are priced equally.¹⁶⁷ He said that despite the withdrawal of Amazon’s Price Parity, his company
 15 had about six different products removed from the Buy Box option when it sold some of the same
 16 products at Target for \$1 less.¹⁶⁸

17 126. Molson Hart, whose company, Viahart, sells toys online, says that 98% of its sales
 18 come from Amazon Marketplace and that other platforms like eBay and Walmart account for less
 19 than 2% of his company’s revenue.¹⁶⁹ He confirmed that even after Amazon officially ended its
 20 Price Parity, it continued to punish sellers who list prices on other websites for less than the price
 21 on Amazon: “If we sell our products for less on channels outside Amazon and Amazon detects this,
 22
 23

24 ¹⁶³ *Supra* Gonzalez.

25 ¹⁶⁴ *Supra* Amazon Squeezes Sellers That Offer Better Prices on Walmart.

26 ¹⁶⁵ *Id.*

26 ¹⁶⁶ *Id.*

27 ¹⁶⁷ *Supra* Gonzalez.

28 ¹⁶⁸ *Id.*

¹⁶⁹ *Supra* Soper & Brody.

our products will not appear as prominently in search and, if you do find them, they will lose their prime check mark and with that, their sales.”¹⁷⁰

127. Likewise, by stifling competition with online retail marketplace operators, Amazon raises marketplace fees for third-party sellers across the Online Retail Marketplaces Market, injuring Plaintiffs and Class members who purchase Class Goods.

B. Amazon’s MFN Agreements Reduce Price Competition And Cause Consumers to Pay More.

128. Absent Amazon’s anticompetitive price policies, third-party sellers would have set a lower price on a platform with lower fees than Amazon or an even lower price on the seller’s own website. Consumers, who purchased the same products offered by Amazon’s third-party sellers, were injured because they purchased at prices artificially inflated by Amazon’s anticompetitive price policies. For example, a customer who purchased a \$150 toy on Viahart (the same price concurrently offered at Amazon) paid \$37 more for the toy than if the seller was able to sell the product for \$37 less on its own website, while making the same profit.¹⁷¹ Amazon’s MFN agreements have a broad reach, encompassing virtually all consumer products. Consumers who make purchases from competing retail e-commerce channels of any of the hundreds of millions of Class Products concurrently offered at Amazon Marketplace are reasonably likely to be injured in the future by these agreements.

129. The following six charts illustrate the effect:¹⁷²

130. The average price of men’s athletic shoes in the last decade has ranged between \$40 and \$50.¹⁷³ Prices of third-party sellers on Amazon Marketplace and other platforms for several products were within this range and the sellers did not vary them across multiple platforms:

¹⁷⁰ *Supra* Hart.

¹⁷¹ *Id.*

¹⁷² The sources of each of the charts are Amazon.com, eBay, Walmart, and other retailer website identified in the charts (retrieved March 5, through March 18, 2020). Note: N/A means that the product is not sold in that marketplace. Shipping is free for all the instances considered.

¹⁷³ Athletic Footwear - United States. Retrieved March 11, 2020, from <https://www.statista.com/outlook/11020000/109/athletic-footwear/united-states>.

Retailer	Product	Amazon	Walmart	eBay	Own Website
Orva Stores	Skechers Men's Equalizer Persistent Slip-On, Charcoal/Black	\$49.95	\$49.95	N/A	N/A
	Diadora Mens Titan Premium Running Sneakers, Blue/Pink	\$39.95	\$39.95	\$39.95	\$39.95
	Diadora Mens Kick Casual Sneakers, White, Grey or Black	\$39.95	\$39.95	\$39.95	\$39.95
Shoebacca	Diadora Mens N.92 Casual Sneakers, Grey	\$39.95	\$39.95	\$39.95	N/A
	Diadora Mens N-6100-4 Running Shoes, Blue	\$39.95	\$39.95	\$39.95	N/A

131. Third-party sellers on Amazon Marketplace and other platforms had virtually identical prices for several golf ball products across multiple platforms:

Retailer	Product	Amazon	Walmart	eBay	Own Website
Greater Golf Express	Volvik 2020 Magma Golf Balls, 12-Pack	\$39.99	\$39.99	\$39.99	\$39.99
	Bridgestone Tour B330-S Golf Balls, 12-Pack	\$34.99	\$34.99	\$34.99	\$34.99
CaddiesShack	Volvik S4 White Color Golf Balls, 12-Pack	\$44.38	\$44.95	\$44.99	N/A
	Titleist Pro V1 AAA Golf Balls, Used, 36-Pack	\$39.99	\$39.99	N/A	N/A
Golf Ball Divers	Bridgestone Golf Precept Laddie Extreme Golf Balls, Used, 36 Pack	\$29.99	\$29.99	N/A	N/A

132. In 2018, AmazonBasics, Amazon's private label, was the leading online brand for disposable batteries, accounting for 26% of the e-commerce market.¹⁷⁴ Third-party sellers' prices for several battery products on external platforms were virtually identical to, or higher than, the prices on Amazon Marketplace:

Retailer	Product	Amazon	Walmart	eBay	Own Website
Pharmapacks	Eveready Super Heavy Duty Batteries, AAA, 4 Each	\$3.36	\$3.36	\$5.04	N/A
Chrome Batteries	12V 7AH Sealed Lead Acid (SLA) Battery	\$21.80	\$21.80	\$29.90	\$21.90
	Synergy Digital AA NiMH 2800mAh Rechargeable Batteries, Pack of 4	\$12.55	\$12.55	N/A	\$12.55
East Coast Photo	DogWatch DG-8000 Large Gray Dog Collar Battery	\$8.95	\$8.95	N/A	\$8.95
	Dantona ULA100AAB Alkaline, AA, Pack of 100	\$33.95	\$33.95	N/A	\$33.95

133. Amazon sells over 1.1 million home improvement products per year, with a revenue of \$6.1 billion in 2017.¹⁷⁵ Prices by third-party sellers on Amazon Marketplace and other platforms were unvaried for several home improvement products across multiple platforms:

¹⁷⁴ Jan Conway, *Market share for largest household battery manufacturers sold online in 2018*, Statista, <https://www.statista.com/statistics/718199/online-market-share-household-batteries>.

¹⁷⁵ Stephanie Chevalier, *US Amazon sales in selected retail product sectors 2017*, Statista, (Feb 16, 2023) <https://www.statista.com/statistics/709493/us-amazon-sales-selected-retail-sectors/>.

Retailer	Product	Amazon	Walmart	eBay	Own Website
Mix Wholesale	Cauldham 5 Pack Solid Kitchen Cabinet Arch Pulls Handles (3-3/4" Hole Centers) - Curved Drawer/Door Hardware - Style T750 - Matte Black	\$13.99	\$13.99	N/A	\$13.99
	Cauldham Heavy-Weight Bin Cup Drawer Pulls (3" Hole Centers) - Classic Kitchen Cabinet Door Handle Hardware - Style B350 - Oil Rubbed Bronze	\$14.99	\$14.99	N/A	\$14.99
	Cauldham 5 Pack Solid Kitchen Cabinet Knobs Pulls (1" Square) - Transitional Dresser Drawer/Door Hardware - Style S685 - Satin Nickel	\$14.99	\$14.99	N/A	\$14.99
Ron's Home and Hardware	WV15TV 1.5 In. Chip Brush, Pack of 36	\$21.37	\$21.37	N/A	N/A
Southfork Homecenter	ProSource Single And Utility Unitrack Shelf Bracket, 8 In L X 2-1/2 In W 1.8 Mm Thick, Steel, White	\$9.38	\$9.38	N/A	N/A

134. Kitchen and dining is another leading product category, accounting for 39% of all Amazon sales in the United States as of January 2019.¹⁷⁶ Prices on Amazon Marketplace and other platforms for several kitchen and dining products were virtually indistinguishable:

Retailer	Product	Amazon	Walmart	eBay	Own Website
eKitchenWorld	Lodge 5 Inch Square Cast Iron Skillet	\$15.40	\$15.40	\$15.40	\$15.40
	Ginsu Essential Dishwasher Safe 6 Piece Steak Knife Set	\$19.94	\$19.94	\$19.94	\$19.94
BigKitchen	GreenPan Paris 3 Quart Non-Stick Dishwasher Safe Ceramic Covered Sauce Pan	\$52.41	\$52.41	N/A	N/A
Zwilling J.A. Henckels	Demeyere Industry 5-Ply 8-inch Stainless Steel Traditional Nonstick Fry Pan	\$79.95	\$79.95	\$79.95	\$79.99
Gourmet Forte	Kai Pure Komachi 2 3pc Prep Knife Set	\$22.95	\$22.95	N/A	N/A

135. Cleaning supplies is another top selling product category on Amazon Marketplace. Prices on Amazon Marketplace and other platforms for several cleaning products were virtually indistinguishable:

Retailer	Product	Amazon	Walmart	eBay	Own Website
Microfiber Products	Microfiber Mop Kit for All Floor Types 100% Green Clean	\$28.95	\$28.95	N/A	N/A
	18" Aluminum Commercial Mop Hardware	\$29.95	\$29.95	N/A	N/A
Ron's Home and Hardware	Armaly Brands 00009 Proplus Heavy-Duty Utility Sponge, 12-Pack	\$30.37	\$38.95*	N/A	N/A
Southfork Homecenter	Continental Commercial Swivel Snap C702048 Dust Mop Frame 48 in	\$13.97	\$13.97	\$13.97	N/A

¹⁷⁶ Daniela Coppola, *Leading product categories purchased by Amazon shoppers in the United States as of February 2019* (Jul 14, 2023), Statista, <https://www.statista.com/statistics/639155/popular-amazoncom-sales-by-category/>.

C. Through Combination or Conspiracy With Its Third-Party Sellers, Amazon Has a Monopoly in The Relevant Markets

136. Amazon’s MFN agreements restrain competition between online retailer marketplaces, causing higher online retail prices. These restraints allow Amazon to dominate the relevant markets.

137. Amazon Marketplace has a monopoly in the U.S. retail e-commerce market or Online Retail Marketplaces Market (defined below), as demonstrated by its power to control prices of a vast number of goods offered for sale in the U.S. retail e-commerce market and through online retailer marketplaces. Its pricing policies support monopoly power “because people who prefer to shop on Walmart [or other sites] end up having to pay a higher price.”¹⁷⁷ Many third-party sellers have foregone selling on other platforms just to avoid conflicts under Amazon’s pricing policy. For example, Jason Boyce, who advises online sellers, said of a health care supply company he advises: “My client cut off Walmart — Walmart! — because it was hurting their Amazon business,” Mr. Boyce said. “If that’s not monopoly power, I don’t know what is.”¹⁷⁸ Sally Hubbard, a former assistant attorney general of New York and current director of enforcement strategy with Open Markets Institute, a think tank that advocates for more aggressive policing of competition laws, agrees: “You ask anybody who knows anything about Amazon, and they will say yes, Amazon has the ability to control prices in some respects. And it certainly has the ability to exclude competition.”¹⁷⁹ Similarly, Lina Khan, whom the House of Representative’s antitrust subcommittee hired as its counsel, opines that it is important to distinguish between Amazon’s innovations and its abuse of market power: “We as a society can live in a world of internet commerce without resigning ourselves to all that commerce being mediated by Amazon.”¹⁸⁰

138. “They control everything,” explained a baby products retailer that formerly sold on Amazon Marketplace.¹⁸¹ “If they don’t want an item on there, they can decide that. If they only

¹⁷⁷ *Supra* Amazon Squeezes Sellers That Offer Better Prices on Walmart.

¹⁷⁸ *Supra* Weise.

¹⁷⁹ Ben Unglesbee, *Is Amazon on a collision course with the government?*, RetailDive (Sept. 30, 2019), <https://www.retaildive.com/news/is-amazon-on-a-collision-course-with-the-government/563622/>.

¹⁸⁰ *Id.*

¹⁸¹ *Supra* Mitchell.

1 want one seller to sell something, they can set that rule.”¹⁸² As another example of Amazon’s power
 2 over its third-party sellers, Amazon imposed a great deal of financial strain on many third-party
 3 payers, accustomed to more immediate payment from consumers, when it rolled out a “pay by
 4 Invoice” policy in 2018 that permitted business customers 30 days to pay for products purchased
 5 on the Amazon.com platform.¹⁸³ One third-party seller complained that Amazon’s policy uses the
 6 third-party sellers “to finance the growth” of its own business customers.¹⁸⁴ Jerry Kavesh, the CEO
 7 of 3P Marketplace Solutions, a consulting firm for the Amazon marketplace, explained why this
 8 placed an unfair burden on third-party sellers: “This new policy at least doubles the cash a small
 9 seller needs to have on hand in order to operate, which many small firms simply do not have and
 10 do not have the ability to access.”¹⁸⁵ He predicted that it “could put sellers in a cash bind, where they
 11 may not be able to pay suppliers and employees, which is problematic at best, and worst could put
 12 them out of business.”¹⁸⁶

13 139. Amazon Marketplace achieved market dominance at least in part through the
 14 contractual controls it exercises over the prices its third-party sellers can offer products through
 15 competing retail e-commerce channels.

16 140. Amazon’s price policies are injurious to market competition. Consumers pay
 17 inflated prices for products that are protected from competitive pricing by Amazon’s
 18 anticompetitive pricing policies. Amazon’s dominance is durable. No other competing retailers
 19 have comparable infrastructure, inventory, customer base, search or data advantages to challenge
 20 Amazon in the ecommerce market.

21 141. “[C]ompanies that once drew sufficient consumer traffic from search engines to
 22 their own sites are now compelled to become vendors or sellers on Amazon’s platform—or forego
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25 ¹⁸² *Id.*

26 ¹⁸³ Eugene Kim, *Some Amazon sellers are outraged over a new payment policy designed to attract more corporate buyers*,” CNBC (Aug. 21, 2018), <https://www.cnbc.com/2018/08/21/amazon-corporate-buyers-longer-terms-some-sellers-upset.html>.

27 ¹⁸⁴ *Id.*

28 ¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

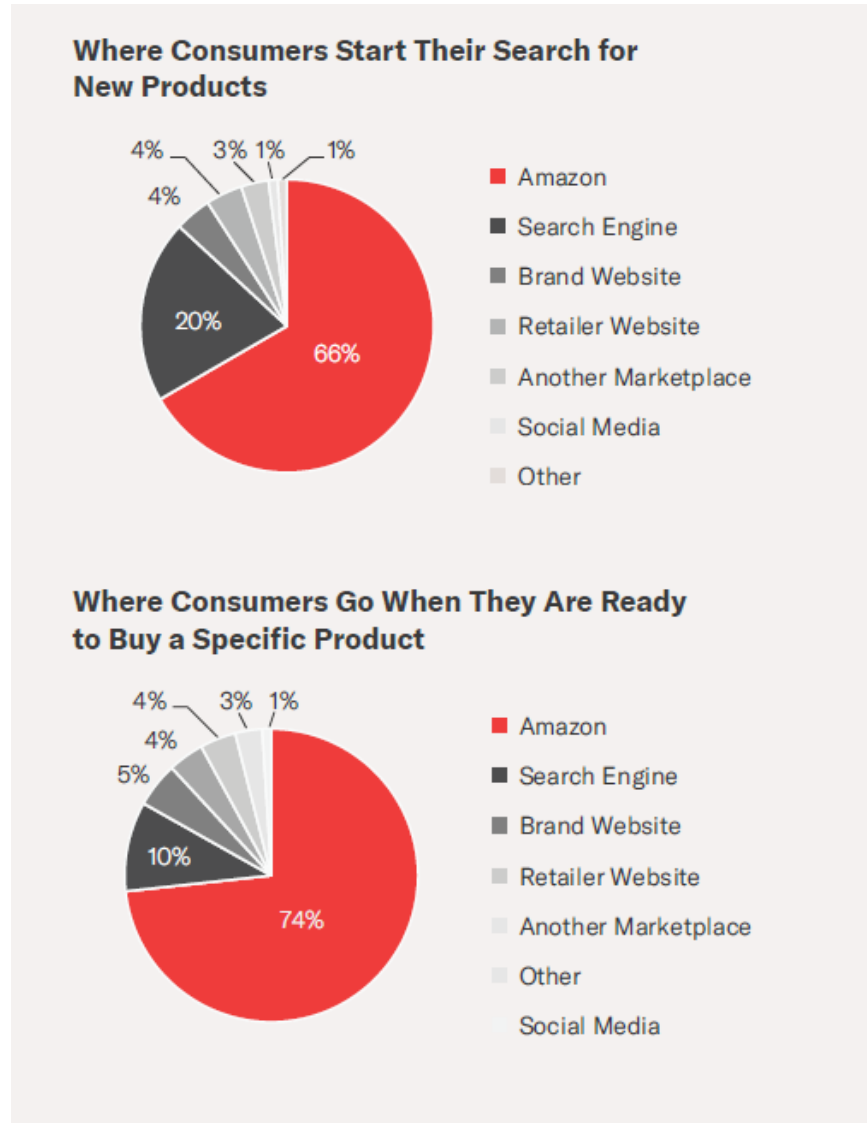
1 access to a majority of online shopping traffic.”¹⁸⁷ This “gives it an unprecedented degree of
 2 structural power in the economy.”¹⁸⁸ As early as 2016, the internet-marketing firm BloomReach
 3 Inc. found that 55% of those surveyed first start with Amazon when searching for products.¹⁸⁹
 4 Consumer preference for Amazon Marketplace as a starting point has only increased with time. A
 5 survey conducted by Feedadvisor in 2019 found that 66% of consumers start their search for new
 6 products on Amazon Marketplace and 74% start there when they are ready to buy a specific
 7 product.¹⁹⁰ Because so many consumers start their shopping on Amazon, Amazon holds valuable
 8 and often unique data on consumers’ search and product browsing history. This allows the creation
 9 of consumer and household profiles, and the targeting of advertising by sellers that use the platform
 10 in a way that is not possible on new or smaller rivals.

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25 ¹⁸⁷ *Id.*

26 ¹⁸⁸ *Id.*

27 ¹⁸⁹ Spencer Soper, *More than 50% of Shoppers Turn First to Amazon in Product Search*, BLOOMBERG, Sept. 26,
 2016, <https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>.

28 ¹⁹⁰ Feedadvisor, *The 2019 Amazon Consumer Behavior Report*, <https://fv.feedvisor.com/rs/656-BMZ-780/images/Feedvisor-Consumer-Survey-2019.pdf>.



142. With over 340 million products and 2.3 million sellers on Amazon Marketplace, Amazon has unparalleled inventory. Its sprawling network of over 100 warehouses is scattered across the United States.¹⁹¹ Amazon has now surpassed DHL to become the world's largest provider of shipping and fulfillment services, giving it a vast edge over its competitors in the distribution of products.¹⁹² Amazon delivers the majority of its own packages.¹⁹³

¹⁹¹ Nate Rattner and Annie Palmer, *This map shows how Amazon's warehouses are rapidly expanding across the country*, CNBC (Jan. 19, 2020), <https://www.cnbc.com/2020/01/19/map-of-amazon-warehouses.html>.

¹⁹² *Supra* Weise.

¹⁹³ Emma Cosgove, *Amazon Logistics parcel volume will surpass UPS and FedEx by 2022*, Retail Dive, (Dec. 16, 2019), <https://www.retaildive.com/news/amazon-logistics-volume-surpass-ups-fedex-2022-morgan-stanley/569140/>.

143. The sheer size of Amazon's first-party retail operations allows it to offer the full suite of entire digital sales infrastructure to third-party sellers, such as inventory management, fulfillment, return processing, and advertising.¹⁹⁴ Lacking that scale, Amazon's rivals like Walmart and Target, who also offer third-party marketplaces, cannot truly compete.¹⁹⁵ And by selling more services, Amazon generates greater profits from the sales of third-party sellers than its competitors can on their online marketplaces.¹⁹⁶

144. The Amazon Marketplace accounts for more than half of all retail e-commerce in the United States, and its closest competitor accounts for only 7.1% of online retail sales.¹⁹⁷ This along with direct evidence of Amazon's power to raise prices and exclude competition support monopoly power.

145. Alternatively, at a minimum, Amazon has a monopoly in the ecommerce submarkets where Amazon Marketplace has a monopoly share of those markets ("Identified Submarkets"), including:

- (a) Batteries (97%),
- (b) Kitchen and Dining (94%),
- (c) Musical Instruments & Karaoke (94%),
- (d) Home Improvement Tools (93%),
- (e) Automotive (92%),
- (f) Golf (92%),
- (g) Skin Care (91%),
- (h) Health (91%),
- (i) Cleaning Supplies (88%),
- (j) Sports, Fitness & Outdoors (87%),
- (k) Party, Arts & Crafts (86%),

¹⁹⁴ *Supra* Statt.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Blake Drosch, *Amazon dominates US ecommerce, though its market share varies by category*, eMarketer (Apr. 27, 2021), <https://www.emarketer.com/content/amazon-dominates-us-ecommerce-though-its-market-share-varies-by-category>.

- (l) Household Essentials (83%),
- (m) Office (83%),
- (n) Home Improvement (82%),
- (o) Electronics (82%),
- (p) Toys & Video Games (81%),
- (q) Personal Care (81%),
- (r) Men's Athletic Shoes (74%),
- (s) Beauty (73%),
- (t) Home (72%),
- (u) Appliances (70%),
- (v) Jewelry & Accessories (70%),
- (w) Pets (68%),
- (x) Baby (68%), and
- (y) Furniture (54%)

D. Alternatively, Amazon Has Attempted to Monopolize The Relevant Markets Through MFN Agreements With Its Third-Party Sellers

146. Amazon, inclusive of its third-party sellers, has over 50% of all online sales of consumer goods; compared to a meager 21% *combined* share of the next nine biggest online retailers.¹⁹⁸ Amazon Marketplace has the power to control retail e-commerce prices generally in the United States and demonstrates this power by setting a floor price for products sold anywhere online by its 2.3 million third-party sellers. Amazon Marketplace's 90% share of the Online Retail Marketplaces Market likewise demonstrates its monopoly power.

147. Amazon Marketplace has achieved this market power at least in part by enforcing its MFN agreements.

148. Setting a floor price for products sold through competing retail e-commerce channels is anticompetitive and causes consumers to overpay in their online purchases.

¹⁹⁸ House Report at 255; *Amazon Now Has Nearly 50% of US Ecommerce Market*, EMARKETER (July 16, 2018), <https://www.insiderintelligence.com/content/amazon-now-has-nearly-50-of-us-ecommerce-market>.

149. Alternatively, if through the MFN agreements, Amazon Marketplace does not already exercise monopoly power in the relevant markets, it has a dangerous probability of achieving a monopoly through its internet dominance and injurious price policies.

E. Amazon is The Subject of a Government Investigation For Possible Antitrust Violations, Including Whether it Uses Its Relationship With Its Third-Party Sellers to Harm Competition

150. As a result of the German authority's findings, as well as coordinated efforts by the U.K.'s Office of Fair Trading, Amazon ultimately abandoned its Price Parity Clause throughout the EU. Amazon also revoked its Price Parity Clause in Japan in response to an investigation by the Japan Fair Trade Commission that concluded in June 2017. But Amazon continued to enforce this provision in the U.S. market until March 2019, when it withdrew the provision in response to the threat of an investigation by the FTC.

151. Still, Amazon did not stop enforcing its other MFN agreements or assuage concerns by government investigators. In 2019, the House subcommittee on antitrust conducted an extensive investigation of Amazon's pricing policies governing third-party sellers. The resulting House Report concluded that "Amazon has a history of using MFN clauses to ensure that none of its suppliers or third-party sellers can collaborate with an existing or potential competitor to make lower-priced or innovative product offerings available to consumers."¹⁹⁹

152. The House Report rejected Amazon's claims that it competes with brick-and-mortar retailers, outside the Online Retail Sales Market, explaining that "[t]his approach is inconsistent with evidence gathered by Subcommittee staff, conventional antitrust analysis of relevant product markets, and common sense."²⁰⁰ The House Report further highlighted the FTC's recent conclusion that a "relevant market may be divided by channel of sale, resulting in separate markets for brick-and-mortar sales and online sales."²⁰¹

153. Relatedly, after a two-year investigation into Amazon's method of awarding Buy Box winners on its marketplace, the Italian competition authority imposed a € 1.1-billion fine,

¹⁹⁹ House Report at 295.

²⁰⁰ House Report at 255.

²⁰¹ *Id.*

1 based on its conclusion that Amazon abused its dominant position in the Online Retail Marketplaces
 2 Market.²⁰² Amazon also entered into a consent decree with the Washington Attorney General and
 3 agreed to a penalty in connection with the Washington Attorney General's investigation into
 4 horizontal price-fixing under the "Sold by Amazon" program, which allowed Amazon to agree on
 5 price with third-party sellers, rather than compete with them.²⁰³

6 154. Then, after a two-year investigation, the California Attorney General sued Amazon
 7 on September 15, 2022, alleging that Amazon used the same MFN agreements that Plaintiffs
 8 challenge in this lawsuit to unreasonably restrain trade and monopolize online markets in violation
 9 of California's antitrust laws. The California Court denied Amazon's motion to dismiss, holding
 10 that the California Attorney General "adequately state[d] a claim that Amazon's agreements and
 11 policies have had the anticompetitive effect of raising prices on competing retail marketplaces as
 12 well as on third-party seller's own websites."

13 155. Following a four-year investigation, the FTC sued Amazon on September 26, 2023,
 14 alleging that Amazon uses a set of interlocking anticompetitive and unfair strategies to illegally
 15 maintain its monopoly power in online markets, including MFN agreements that Plaintiffs
 16 challenge here, like the Price Parity Clause and SC-FOD, which the FTC characterizes as anti-
 17 discounting measures that punish third-party sellers from offering prices lower than Amazon and
 18 keeps prices higher for products across the internet.

19 VI. INTERSTATE TRADE AND COMMERCE

20 156. Amazon's activities as alleged in this complaint were within the flow of, and
 21 substantially affected, interstate commerce. Amazon sells goods on its own behalf and as a platform
 22 for its third-party sellers across, and without regard to, state lines.

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 26 ²⁰² Steve Dent, *Italian regulator fines Amazon \$1.28 billion for abusing its market dominance*, Engadget (Dec. 9,
 27 2021), <https://www.engadget.com/italy-fines-amazon-for-abuse-of-dominant-position-085244332-085736675.html>.

28 ²⁰³ Press Release, *AG Ferguson investigation shuts down Amazon price-fixing program nationwide*, Washington
 State Attorney General's Office, (Jan. 26, 2022), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-investigation-shuts-down-amazon-price-fixing-program-nationwide> (last visited Feb. 23, 2022).

VII. RELEVANT MARKETS

157. The antitrust injuries alleged herein have occurred in a) the U.S. retail e-commerce market, b) the Identified Submarkets within that market, or c) the Online Retail Marketplace Market.

A. U.S. Retail Ecommerce Market And Identified Submarkets Are Relevant Markets to assess amazon's anticompetitive MFN Agreements

158. Government agencies, economists, customers and retailers alike recognize the retail ecommerce market as a distinct market within the U.S. retail market. Industry recognition of a distinct ecommerce retail market is relevant because economic actors usually have accurate perceptions of economic realities and the parties active in the market understand its function and demarcation.

159. For example, the U.S. Census Bureau defines ecommerce as “[t]he sale of goods and services where the buyer places an order, or the price and terms of the sale are negotiated over an Electronic Data Interchange, the Internet, or any other online system (extranet, e-mail, instant messaging).” The market also includes mobile shopping.²⁰⁴ It has collected data on ecommerce sales since 1998.²⁰⁵ In 2002, it began compiling E-STATS, statistics “devoted exclusively to ‘Measuring the Electronic Economy,’”²⁰⁶ and it publishes quarterly ecommerce reports.²⁰⁷ More recently, the Census Bureau released a supplemental data table on retail e-commerce by type of retailer to enhance “understanding of where consumers are shopping online” and “provide an overview of trends in retail and e-commerce sales.”²⁰⁸ Census data are also available for e-commerce sales by type of product.²⁰⁹ Similarly, the Bureau of Labor Statistics Producer Price Index (PPI) program separately tracks the ecommerce industry group, which includes both

²⁰⁴ *E-commerce in the United States - Statistics & Facts*, Statista, Dec 18, 2023, <https://www.statista.com/topics/2443/us-ecommerce/>.

²⁰⁵ New Insights on Retail E-Commerce, U.S. Department of Commerce, <https://web.archive.org/web/20190110125004/https://www.commerce.gov/news/fact-sheets/2017/07/new-insights-retail-e-commerce>.

²⁰⁶ <https://www.census.gov/programs-surveys/e-stats.html>.

²⁰⁷ https://www.census.gov/retail/ecommerce/historic_releases.html.

²⁰⁸ New Insights on Retail E-Commerce, U.S. Department of Commerce, <https://web.archive.org/web/20190110125004/https://www.commerce.gov/news/fact-sheets/2017/07/new-insights-retail-e-commerce>.

²⁰⁹ *Id.*

1 electronic shopping and auctions.²¹⁰ According to a publication by the U.S. Bureau of Labor
 2 Statistics, ecommerce retailers typically maintain lower margins than brick-and-mortar stores
 3 because of lower overhead costs associated with preserving store appearance, *e.g.*, décor and store
 4 maintenance.²¹¹ Because they do not have the same overhead, the publication finds that online
 5 retailers can provide more competitive prices, whereas brick-and-mortar stores, on the other hand,
 6 offer consumers immediate gratification and personalized service.²¹² On the other hand, data from
 7 the U.S. Census Bureau, indicated that brick and mortar stores require less advertising and that on
 8 average, ecommerce and mail-order retailers spent three times as much as store retailers on
 9 advertising and promotions per dollar of sales.²¹³

10 160. Ecommerce has unique characteristics, including the marketing and distribution of
 11 products. Economists recognize that the “[i]nternet represents a fundamentally different
 12 environment for retailing from traditional retailing.”²¹⁴ An online channel has distinct
 13 characteristics from a physical channel.²¹⁵ Ecommerce has a superior method of transmitting
 14 information, effective asynchronous communication, greater flexibility in dealing with information,
 15 with far greater interactivity and search capability.²¹⁶ “Despite the relative inefficiency of delivering
 16 goods directly to the home,” ecommerce leads to unique cost savings because “supplying direct to
 17 the consumer is less expensive than doing so through a store.”²¹⁷ Ecommerce retail businesses avoid
 18 the costs “of handling within the store (unpacking, stocking and maintaining shelves, and such),
 19 theft (which can easily account for 3 percent of the sales of a retailer), rent (low-cost distribution
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21 ²¹⁰ Lana Borgie, *Trends in producer prices between e-commerce and brick-and-mortar retail trade establishments*,
 Prices & Spending Vol. 3, No. 18, Aug. 2014, <https://www.bls.gov/opub/btn/volume-3/pdf/trends-in-producer-prices-between-e-commerce-and-brick-and-mortar-retail-trade-establishments.pdf>.

22 ²¹¹ *Id.* at 3.

23 ²¹² *Id.* at 2-3.

24 ²¹³ *Id.* at 3-4 and n.8.

25 ²¹⁴ Forsythe, S.M., & Shi, B. (2003). *Consumer patronage and risk perceptions in Internet shopping*. Journal of
 Business Research 56, 867–875 at 874.

26 ²¹⁵ Katawetawaraks, C., & Wang, C. H. (2011). *Online Shopper Behavior: Influences of Online Shopping Decision*.
 Asian Journal of Business Research, 1(2), 66-74.

27 ²¹⁶ Severin Borenstein and Garth Saloner, *Economics and Electronic Commerce*, JOURNAL OF ECONOMIC
 PERSPECTIVES, Vol. 15, No.1 (Winter 2001) at 5, <https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/Economics%20and%20Electronic%20Commerce.pdf>; *see also* David VanHoose, *E-COMMERCE ECONOMICS*
 (Routledge 2nd Ed. 2011); <https://www.routledge.com/eCommerce-Economics/VanHoose/p/book/9780415778985>.

28 ²¹⁷ *Id.*

centers replace expensive urban or suburban real estate), and selling costs (automated and tele-sales replace relatively expensive in-store salespeople).²¹⁸ Consumers similarly benefit from greater “information about available goods and services, and services; an improvement in access to these goods; and the ability to customize goods to fit the tastes of buyers.”²¹⁹ Economists also recognize that the physical location of the business operating within ecommerce becomes less relevant because the ecommerce market “facilitates production and distribution across borders ... and can assist in opening markets that were previously closed.”²²⁰ The lower transaction costs and production costs also facilitate easier entry into the market and increase competition.²²¹ Demand side preferences also make online retailing unique in terms of certain factors such as convenience and price.²²² Because competing offers are “just a few clicks away on the Internet, online consumers can more easily compare different alternatives before buying with lower search cost than offline consumers.”²²³ Online shoppers can also more easily put off purchases decisions until they are ready to buy because they have not invested in travel time and do not face the pressure from the salespeople that shoppers in brick and mortar stores experience.²²⁴

161. Yale economist Fiona Morton notes that “[d]igital platforms combine economies of scale, low marginal costs, economies of scope through data and an installed base of users, network effects, multi-sidedness, and sometimes a global reach.”²²⁵ The combination of these attributes “tend to generate concentrated markets, or market structures containing few firms,” and “the

²¹⁸ *Id.* at 5-6.

²¹⁹ *Id.* at 6-7.

²²⁰ Andrew D. Mitchel, Towards Compatibility: The Future of Electronic Commerce within the Global Trading System, *J Int Economic Law* (2001) 4 (4): 683.

²²¹ *Id.*

²²² Tracey Wallace, *Omnichannel Retail Strategy: How to Meet the Needs of Today's Shoppers*, <https://www.bigcommerce.co.uk/articles/omnichannel-retail/>; see also Isabel P. Enrique and Sergio Román, *The Influence of Consumers' Cognitive and Psychographic Traits on Perceived Deception: A Comparison Between Online and Offline Retailing Contexts*, *J Bus Ethics* (2014) 119:405–422 (examining the role of several consumers' cognitive and psychographic traits in their perception of retailers' deceptive practices (perceived deception) and the different effects on perceived deception associated with online vis- à-vis in-store shopping, indicating that they need to be considered as distinct experiences for the customer).

²²³ *Supra* Isabel P. Enrique and Sergio Román at 408.

²²⁴ *Id.*

²²⁵ Testimony of Fiona M. Scott Morton, Ph.D., House Judiciary Committee (Mar. 7, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-ScottMortonF-20190716.pdf>.

1 addition of inertial (or ‘sticky’) consumers these markets feature high entry barriers which make it
2 difficult for new firms to enter the market to create competition.”²²⁶

3 162. The Stigler Committee on Digital Platforms, on which Ms. Morton also serves as
4 the chair of the Subcommittee on Market Structure and Antitrust, reports that “[t]raditional brick-
5 and-mortar stores and online platforms differ greatly in their advertising and personalization
6 capabilities.”²²⁷ Online retailers “almost always require account creation for purchasing, verify this
7 information for each transaction, and have direct or easy access to detailed non-shopping
8 information about their customers.”²²⁸ This account creates a digital identity, which incorporates
9 select data on age, sex, address, email address, preferences, and, potentially, more information.²²⁹
10 By comparison, physical shops tend not to force shoppers to identify themselves—and indeed
11 consumers who use cash, credit cards with chips or phone payment apps do not identify themselves
12 to the store.²³⁰ In addition to the data the online retailers collect, data intermediaries also collect
13 consumers’ information that they then sell. Consumers on the internet leave numerous traces of
14 their activities across a broad range of applications, and the emergence of the Internet of Things
15 means that platforms have access to yet more data generated by home appliances, cars, and other
16 devices, *e.g.*, tracking eye movement, mouse movement, body movement, and body position.²³¹
17 Advances in data mining and artificial intelligence enable firms to learn more from data than was
18 conceivable a few decades ago.²³² The digital identities online retailers and others create help them
19 identify and tag users to the data they generate, permitting the collection and analysis of vast
20 amounts of data on individual behavior. This ability to merge a consumer’s purchase history with
21 other detailed information about their customers’ lives from other consumer data sources gives
22 online platforms a distinct advantage over in-store retailers to design targeted advertising for

23 ²²⁶ *Id.*

24 ²²⁷ Stigler Committee on Digital Platforms (Sep. 16, 2019), <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf> at 45.

25 ²²⁸ Stigler Committee on Digital Platforms at 45.

26 ²²⁹ *Id.* at 54.

27 ²³⁰ *Id.* at 45; *How Does the Chip in My Credit Card Work?* Ascent (Apr 24, 2024), <https://www.fool.com/the-ascent/credit-cards/articles/how-does-the-chip-in-my-credit-card-work/>.

28 ²³¹ *Id.* at 48.

²³² *Id.*

1 particular consumers, based on many aspects of their lives beyond their historical shopping
 2 habits.²³³ Lina M. Khan agrees: “The degree to which a firm can tailor and personalize an online
 3 shopping experience is different in kind from the methods available to a brick-and-mortar store--
 4 precisely because the type of behavior that online firms can track is far more detailed and
 5 nuanced.”²³⁴

6 163. Large platform operators like Amazon operate other services (for example, Prime
 7 video, Goodreads, Kindle books) that allow them to collect different dimensions of data on a
 8 consumer (for example, identity, location, and purchase intent) which give faster intelligence on
 9 competitive threats and superior insights into what firms they should block, which they should buy,
 10 and how they should grow strategically.²³⁵ The Stigler Committee on Digital Platforms reports:
 11 “This gives the platform an advantage over a rival entrant considering the same set of opportunities,
 12 and increases their abilities to exclude such rivals.”²³⁶

13 164. U.S. retailers recognize the online market as a separate economic entity. Established
 14 large retailers, *e.g.*, Walmart, Target, and Costco, have an online presence, but focus their efforts
 15 overwhelmingly on their physical stores. For example, in 2017, ecommerce accounted for only
 16 5.5% of revenue for Target,²³⁷ 4% for Costco,²³⁸ and 3% for Walmart.²³⁹ Only 28% of small
 17 businesses sell online.²⁴⁰ Online retailers commonly advertise only online, whereas store retailers

20 ²³³ *Id.* at 45. *See also id.* at 232 (“It is not evident from Amazon’s privacy policies that there are limits on the
 21 company’s ability to purchase data from a third party like Fitbit, to aggregate that database with Amazon’s own data,
 and then to identify particular kinds of consumers (*e.g.*, long-distance runners) on that basis.”).

22 ²³⁴ Lina M. Khan, *Amazon’s Antitrust Paradox*, 126 Yale L.J. 710, 764 (2017).

23 ²³⁵ *Id.* at 75.

24 ²³⁶ *Id.*

25 ²³⁷ Nat Levy, *Target’s digital sales grew 10X faster than in-store sales in 2018, as retailer adjusts to battle Amazon*,
 26 Geekwire, Mar. 5, 2019, <https://www.geekwire.com/2019/targets-digital-sales-grew-10x-faster-store-sales-2018-retailer-adjusts-battle-amazon/>.

27 ²³⁸ *Trefis Team, How Much Of Wal-Mart’s Revenue Will Come From E-Commerce In 2020?*, Forbes, Nov. 27,
 28 2017, <https://www.forbes.com/sites/greatspeculations/2017/11/27/how-much-of-wal-marts-revenue-will-come-from-e-commerce-in-2020/#454ed14359f2>.

²³⁹ E-commerce accounts for 4% of Costco’s sales and is growing 12%, <https://www.digitalcommerce360.com/2017/03/06/e-commerce-accounts-4-costcos-sales-growing-12/>.

²⁴⁰ Jia Wertz, *How Brick-And-Mortar Stores Can Compete With E-Commerce Giants*, Forbes, May 17, 2018,
<https://www.forbes.com/sites/jiawertz/2018/05/17/how-brick-and-mortar-stores-can-compete-with-e-commerce-giants/#4be14a943cc0>.

1 advertise both on and offline.²⁴¹ Unlike brick and mortar stores, ecommerce retailers do not have a
 2 way to take payment by cash or checks.²⁴² Brick and mortar stores typically provide customer
 3 service in-store to respond to questions about product offerings, whereas customer service for
 4 ecommerce retail is typically less comprehensive or effective.²⁴³

5 165. U.S. Consumers distinguish between ecommerce and brick-and-mortar shopping
 6 markets. As a practical matter, the ecommerce market requires access, usually through a personal
 7 computer, smart phone or tablet, and most, but not all U.S. consumers have access to this market.²⁴⁴
 8 According to a Pew Research Center study in 2016, 64% of U.S. consumers prefer shopping in
 9 physical stores, and when purchasing something for the first time, 84% of U.S. consumers found it
 10 important to be able to ask questions about what they are buying or to buy from sellers they are
 11 familiar with, and 78% think it is important to be able to try the product out in person, where
 12 physical stores have an advantage over ecommerce.²⁴⁵

13 166. Ecommerce attracts a younger demographic. A 2017 survey by Statista found that
 14 67% of Millennial shoppers preferred to search and purchase on ecommerce sites rather than in
 15 store, while only 28% of seniors do.²⁴⁶ Online retailers offer a broader selection and a larger
 16 inventory than offline retailers do. Consumers can shop online 24/7 and locate hard-to-find items
 17 more easily than they could by searching physical stores.²⁴⁷ Online retail provides greater
 18 convenience to consumers who can order products from any location without having to find a brick-
 19 and-mortar store selling the specific product with the specific desired attributes and the desired
 20 quantity.²⁴⁸ Shopping in physical stores offers more social interaction and socializing with other

21
 22 ²⁴¹ Anna Johansson, *6 Differences Between E-Commerce & Brick-and-Mortar Stores*, RetailNext,
<https://retailnext.net/en/blog/6-fundamental-differences-between-e-commerce-brick-and-mortar-stores/>.

23 ²⁴² *Id.*

24 ²⁴³ *Id.*

25 ²⁴⁴ Aaron Smith and Monica Anderson, *Online Shopping and E-Commerce*, Pew Research Center, Dec. 19, 2016,
<https://www.pewresearch.org/internet/2016/12/19/online-shopping-and-e-commerce/>.

26 ²⁴⁵ *Id.*

27 ²⁴⁶ Stephanie Chevalier, U.S. online shopping preference 2017, by age group, Oct 13, 2021, <https://www.statista.com/statistics/242512/online-retail-visitors-in-the-us-by-age-group/>.

28 ²⁴⁷ Susan Ward, *Brick and Mortar Stores vs Online Retail Sites*, Sep. 13, 2022, <https://www.thebalancesmb.com/compare-brick-and-mortar-stores-vs-online-retail-sites-4571050>.

²⁴⁸ *Id.*

shoppers and it is faster and easier to return a defective or unwanted product in-store rather than shipping back to an online retailer.²⁴⁹ The following graphic summarizes the key differences between markets from the consumers' perspective:²⁵⁰



²⁴⁹ *Supra* Ward.

²⁵⁰ Rose Leadem, *67 Fascinating Facts About Ecommerce vs. Brick and Mortar (Infographic)*, Dec. 30, 2017, <https://www.entrepreneur.com/article/306678>.

167. Ecommerce stores have a distinctly different look and feel to customers than markets that rely on a different chain of distribution, *e.g.*, in-store purchases, mail-order or purchases made from traveling sales staff. Typically, with a few clicks or a simple voice command, an ecommerce retailer will send the product directly to the consumers without any interaction with sales staff.

168. For purposes of their rule of reason and monopoly claims, Plaintiffs allege that the relevant market in which to assess the impact of Amazon's conduct is the U.S. retail ecommerce market as a whole. In the alternative, the relevant markets are the U.S. ecommerce retail market for the sales of the Identified Submarkets, where Amazon has a dominant share of the online market.

169. Amazon's restraints on competition directly impact the U.S. retail ecommerce market and each of the Identified Submarkets as alleged herein.

B. The Two-Sided Online Retail Marketplace Market is Another Relevant Market to Assess Whether Amazon's MFN Agreements Have Had an Anticompetitive Impact

170. Amazon's MFN agreements not only raise consumer prices and reduce competition with existing and potential online retailers, they also act as barriers to prevent existing online retail marketplace operations from expanding or potential rivals from entering the market.

171. The Italian competition authority, Autorità Garante della Concorrenza e del Mercato ("AGCM") recently fined Amazon \$1.3 billion for its use of a biased algorithm that suppressed offers from third-party sellers that Amazon disfavored because they chose not to enroll in Amazon's Fulfilled by Amazon.²⁵¹ For purposes of its enforcement action, the AGCM defined the relevant market as the market for intermediation services on online marketplaces.²⁵²

172. An online "marketplace," as distinguished from a retailer's proprietary website, "allows consumers to access the offer of goods of one or more product categories by a plurality of sellers and the latter to offer their products online to an often very large audience of consumers."²⁵³ An intermediation service, as used by the AGCM and alleged here by Plaintiffs, refers to the business of a two-sided platform that brings together consumers and sellers and can resolve

²⁵¹ Autorità Garante Della Concorrenza e del Mercato, Dec. 9, 2021 Final report ("AGCM Report"), ¶ 883.

²⁵² *Id.* ¶¶ 508-21.

²⁵³ *Id.* ¶ 38.

1 transactions without redirecting them elsewhere.²⁵⁴ In economic theory, a two-sided platform is
 2 characterized by the presence of network effects: its usefulness for users on one side of the platform
 3 increases as the number of users on the other side increases (in this case consumers and sellers
 4 occupy respective sides of Amazon Marketplace’s two-sided platform).²⁵⁵ As described below,
 5 online retail marketplaces are characterized by their network effects.

6 173. This market (identified in this Complaint as the “Online Retail Marketplace
 7 Market”), comprising of online platforms that allow consumers to purchase retail products listed
 8 by multiple independent sellers without having to leave the platform, is therefore another relevant
 9 market where the anticompetitive effects of Amazon’s MFN agreements are felt. The Online Retail
 10 Marketplace Market necessarily excludes the following retail sales:

- 11 (a) Offline sales because “the physical channel for the sale of products to end
 12 consumers is not considered replaceable with online sales” or
 13 “intermediation services offered by marketplaces” in “e-commerce”;²⁵⁶
- 14 (b) Sales on proprietary online sites managed directly by retailers because of the
 15 “significant differences” from “the perspective of the retailer” between “the
 16 exercise of the online sales activity through a platform and the construction
 17 and management of a website owned with ecommerce functionality”;²⁵⁷
- 18 (c) Sales on social media or a price comparison service because the sales
 19 transactions are not realized on the original platform, but rather require the
 20 consumer to be redirected “to sellers’ websites or to marketplaces”;²⁵⁸ and
- 21 (d) Sales on specialized marketplace platforms that offer a selection of products
 22 in a limited category because they only serve “the needs of consumers
 23 looking for a specific product and a targeted purchase” and attract only a
 24

25 ²⁵⁴ *Id.* ¶¶ 38-46.

26 ²⁵⁵ *Id.* ¶ 41.

27 ²⁵⁶ *Id.* ¶ 522.

28 ²⁵⁷ *Id.* ¶ 532.

²⁵⁸ *Id.* ¶ 565.

small fraction of the third-party sellers that sell on broader “horizontal markets,” like Amazon’s.²⁵⁹

174. Amazon’s anticompetitive conduct has allowed it to maintain or increase its market share of the Online Retail Marketplace Market, which is estimated to be as high as 90% of all U.S. online marketplace sales.²⁶⁰

175. For many U.S. consumers online shopping is virtually synonymous with Amazon. Before making a purchase, 82% of consumers check prices from Amazon, 79% check Amazon’s reviews, and 74% of U.S. consumers go directly to Amazon when they are ready to purchase a specific product.²⁶¹

1. Online retail marketplaces, like Amazon Marketplace, have powerful network effects.

176. Online retail marketplaces like Amazon Marketplace, benefit from powerful network effects. “Network effect” refers to any situation in which the value of a product, service, or platform depends on the number of buyers, sellers, or users who use that product, service, or platform.²⁶² Indirect network effects occur when there are two types of users and the benefit of the platform increases for one user group as the membership of other group increases. As applied here, the more consumers who use Amazon Marketplace to shop, the greater the benefit to sellers using the platform to make retail sales, and conversely, the more sellers that join Amazon Marketplace, the greater the benefit to consumers using the platform to make retail purchases.

177. Amazon Marketplace is the prototypical example of strong indirect network effects. Amazon’s consumer base of hundreds of millions of customers makes it indispensable to third-party sellers, and its 2 million active third-party sellers help to secure its customers’ loyalty, who cannot find the breadth of products that Amazon’s marketplace offers anywhere else.

²⁵⁹ *Id.* ¶¶ 81, 84.

²⁶⁰ House Report at 255.

²⁶¹ The 2019 Amazon Consumer Behavior Report, <https://fv.feedvisor.com/rs/656-BMZ-780/images/Feedvisor-Consumer-Survey-2019.pdf> at 14-15.

²⁶² Tim Stobierski, *What are network effects?*, Harvard Business School Online (Nov. 12, 2020), <https://online.hbs.edu/blog/post/what-are-network-effects>.

178. As a first-party retailer, Amazon sells 12 million unique products on its marketplace—not including books, media, wine, and services.²⁶³ Third-party sellers greatly expand the number of unique products offered on Amazon Marketplace by offering 340 million products.²⁶⁴

2. Amazon does not face any serious competitive threat to its dominance in the Online Retail Marketplace Market.

179. Amazon’s size alone is direct evidence of its market power. Amazon’s market capitalization is currently \$1.797 trillion.²⁶⁵ By that measure, Amazon is the world’s fifth-biggest company.

180. Online big box stores do not pose a credible threat to Amazon Marketplace. While they may have a significant number of visitors to their website, they cannot compete with the broad catalogue of goods available on online retail marketplaces or the marketplaces’ ability to deliver to their customers.²⁶⁶ Because “most marketplaces launched by retailers” do not invest in the infrastructure necessary to offer a sufficiently broad category of goods, they “fail to generate significant sales volume.”²⁶⁷ For example, Best Buy launched its marketplace in the U.S. in 2011, only to shut it down five years later because of “customer confusion over marketplace purchases.”²⁶⁸ Jeff Shelman, Best Buy spokesperson, explained that its customers were confused by Best Buy’s “inability to offer in-store pickup for items offered for sale by third-party merchants,” and by “the fact that customers could not return marketplace items to Best Buy’s retail stores.”²⁶⁹

181. The anticompetitive effects of Amazon’s MFN agreements must also take into consideration the market advantages that Amazon already enjoys by virtue of being one of the first online retail marketplaces and through its early recognition of the value of gathering consumer data.

²⁶³ *How many products does Amazon carry?*, Retail TouchPoints, <https://www.retailtouchpoints.com/resources/how-many-products-does-amazon-carry>.

²⁶⁴ 15 Amazon Statistics You Need to Know in 2022, repricerexpress.com, <https://web.archive.org/web/20220308015705/https://www.repricerexpress.com/amazon-statistics/>.

²⁶⁵ <https://companiesmarketcap.com/amazon/marketcap/> (visited April 25, 2024).

²⁶⁶ *Retailers Do Not Need Marketplaces*, Marketplace Pulse (Sep 15, 2020), <https://www.marketplacepulse.com/articles/retailers-do-not-need-marketplaces>.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

182. The U.S. House subcommittee itself recognized that “large technology firms” like Amazon “maintain market power in part because it is not easy for users to switch away from the incumbent’s technology.”²⁷⁰ For example, a third-party seller cannot easily download and migrate its ratings and reviews from Amazon Marketplace and would instead have to start without ratings and reviews on a new platform.²⁷¹ The difficulty users face with switching away from Amazon’s technology causes both consumers and third-party sellers to stick with Amazon even though they may prefer an Amazon rival.²⁷²

183. Other Big Tech companies have failed to challenge Amazon’s dominance. After attracting fewer than 8,000 sellers even with the promise of eliminating seller commissions,²⁷³ Google exited the online marketplace market in 2021.²⁷⁴

184. Nor does the specialized ecommerce platform, Shopify, pose a risk to Amazon Marketplace’s dominance. As recently confirmed by CEO Tobi Lütke, Shopify has no current intention of competing with Amazon in the Online Retail Marketplaces Market.²⁷⁵ Instead, Shopify helps online retailers to build their own online store, but it does not help them reach customers, and conversely Shopify’s consumer-facing app does not even allow consumers to search for products across Shopify stores.²⁷⁶ “Merchants are not a point of leverage for Shopify to build a consumer brand, explains Ben Thompson at Stratechery, “they are Shopify’s reason to exist, and no growth hack is going to change that[.]”²⁷⁷

²⁷⁰ House Report at 41.

²⁷¹ *Id.* at 42.

²⁷² *Id.* at 41-42.

²⁷³ *Google Shopping Is Not Attracting Sellers Despite 0% Fees*, Marketplace Pulse (Sep. 30, 2020), <https://www.marketplacepulse.com/articles/google-shopping-is-not-attracting-sellers-despite-0-fees>.

²⁷⁴ *Google Promised a Marketplace but Then Gave Up-*, Marketplace Pulse (Aug. 19, 2021), <https://www.marketplacepulse.com/articles/google-promised-a-marketplace-but-then-gave-up>.

²⁷⁵ *Shopify Won’t Build a Marketplace*, Marketplace Pulse (Apr. 6, 2021), <https://www.marketplacepulse.com/articles/shopify-wont-build-a-marketplace>; Lucy Carney, *Shopify vs Amazon: Which Platform Should You Use?* (Aug 17, 2023), <https://www.websitebuilderexpert.com/ecommerce-website-builders/comparisons/shopify-vs-amazon/>.

²⁷⁶ *Shopify’s Almost-Marketplace Called Shop*, Marketplace Pulse (Apr. 29, 2020), <https://www.marketplacepulse.com/articles/shopifys-almost-marketplace-called-shop>.

²⁷⁷ *Id.*

185. Sally Hubbard, former New York Assistant Attorney General and current Director of Enforcement Strategy at the Open Markets Institute, observes, consumers “benefit from robust competition, open markets, and a de-concentrated economy,” where “the best rise to the top because of merit, not because powerful gatekeepers control who gets to succeed.”²⁷⁸

186. In China, for example, where Amazon withdrew from the market because of the fierce competition it faced, consumers have many innovative options for online shopping. Most Chinese sites offer next-day shipping, which Amazon Marketplace struggles to provide.²⁷⁹ Payment for Chinese e-commerce is also commonly held in an escrow and then released once the delivery occurs, eliminating many disputes related to shipping.²⁸⁰ Online sites in China provide shoppers extensive product suggestions based on machine learning, allow consumers to skip time-consuming credit card transactions by using mobile payment, and permit consumers to avoid the chaos of China’s equivalent of Black Friday by paying a security deposit to reserve products at the sales price weeks before the sale occurs.²⁸¹ And built-in online chat forums allow consumers to bargain with online sellers.²⁸²

187. In a competitive market, U.S. consumers would likely benefit from similar innovations. But facing no serious competition in the Online Retail Marketplace Market, Amazon does not innovate: “The feedback Amazon gathered over the years is that it doesn’t need to do more than it already does,” and instead it “spends most of its resource” on fortifying its monopoly power.²⁸³ This includes Amazon’s enforcement of MFN agreements to prevent price competition with the products it sells as part of its first-party retail sales.

188. Eliminating Amazon’s anticompetitive pricing policies would not lead to any discernible negative indirect network effects under the circumstances described herein. For

²⁷⁸ Amazon Is a Monopoly, an Interview With Sally Hubbard - Marketplace Pulse (Aug. 6, 2019), <https://www.marketplacepulse.com/articles/amazon-is-a-monopoly-an-interview-with-sally-hubbard>.

²⁷⁹ *The Real Difference Between China and US E-Commerce*, Enleaf, <https://enleaf.com/the-real-difference-between-china-and-us-e-commerce/>.

²⁸⁰ *Id.*

²⁸¹ *Supra* Kaur.

²⁸² *Supra* The Real Difference Between China and US E-Commerce.

²⁸³ *Supra* Minimum Viable Amazon.

1 example, unlike credit-card transaction platforms, allowing third-party sellers to compete on price
 2 through competing retail e-commerce channels would not reduce the money available to pay
 3 rebates or rewards to consumers because Amazon does not pay rebates or rewards to its retail
 4 customers.

5 189. Amazon also does not need the contested price policies to prevent free riding from
 6 third-party sellers. Amazon already collects substantial fees from them and prevents free-riding by
 7 generally prohibiting third-party sellers from communicating directly with customers on Amazon
 8 Marketplace.²⁸⁴

9 190. Nor are they needed to combat free riding from consumers. Many regular Amazon
 10 customers already pay substantial fees for their Prime membership, and Amazon dominates
 11 consumers' online searches of retailer websites, creating an "information bottleneck" that prevents
 12 many consumers from ever receiving competitive price information from other sources.²⁸⁵

13 191. In fact, Amazon can point to no legitimate considerations that countervail the
 14 propriety of the monetary and injunctive relief that Plaintiffs seek.

15 VIII. CLASS ACTION ALLEGATIONS

16 192. Plaintiffs bring this action on behalf of themselves, and as a class action under the
 17 Federal Rules of Civil Procedure, Rule 23(a), (b)(2) and (b)(3), seeking damages and injunctive
 18 relief on behalf of the members of the following Class:

19 All persons who, on or after March 19, 2016, purchased from a third-
 20 party seller on the Walmart or eBay online retail marketplaces in the
 21 United States one or more new, physical products concurrently
 22 offered for sale by Amazon's third-party sellers on Amazon
 Marketplace and monitored by Amazon as part of its competitive
 price monitoring.

23 193. Excluded from the Class are the Defendant and its officers, directors, management,
 24 employees, subsidiaries, or affiliates. Also excluded are the district judge or magistrate judge to
 25 whom this case is assigned, as well as those judges' immediate family members, judicial officers

26 ²⁸⁴ *Supra* Hart; Irwin Decl., Ex. A at 6 (¶ 14).

27 ²⁸⁵ Retail Industry Leaders Association letter to the Federal Trade Commission re: Competition and Consumer
 28 Protection in the 21st Century Hearings (Project Number P181201) (Jun. 30, 2019), at 3,
<https://rila.my.salesforce.com/sfc/p/#61000000dOrP/a/4M000000DO0Z/H5c7IH2umW0ayLluMXZ0TsRBosaLIZA V9aTfcf9rs3o>.

1 and their personnel, and all governmental entities. For avoidance of doubt, persons are not included
2 in the class by reason of their purchases of used products, digital products, or purchases made
3 through a prescription.

4 194. The identity of all products encompassed within the Class's definition are readily
5 identifiable from information and records maintained by Defendant. The identity of the members
6 of the Class and their records of Class Product purchases is readily available through multiple
7 sources that record online purchases, including Class members' own records of online transactions
8 and payment, the records of the online retail marketplaces from whom the Class Products were
9 purchased, and Class members' and online retailers' records of payment through PayPal, credit
10 cards and other financial institutions.

11 195. **Numerosity:** Members of the Class are so numerous that joinder is impracticable.
12 Plaintiffs believe that there are tens of millions of members of the Class (if not more),
13 geographically dispersed throughout the United States, such that joinder of all Class members is
14 impracticable.

15 196. **Typicality:** Plaintiffs' claims are typical of the claims of the other Class members.
16 The factual and legal bases of Defendant's liability are the same and resulted in injury to Plaintiffs
17 and all other members of the proposed Class.

18 197. **Adequate representation:** Plaintiffs will represent and protect the interests of the
19 proposed Class both fairly and adequately. They have retained counsel competent and experienced
20 in complex class-action litigation. Plaintiffs have no interests that are antagonistic to those of the
21 proposed Class, and their interests do not conflict with the interests of the proposed Class members
22 they seek to represent.

23 198. **Commonality:** Questions of law and fact common to the members of the Class
24 predominate over questions that may affect only individual Class members because Defendant has
25 acted on grounds generally applicable to the Class and because Class members share a common
26 injury. Thus, determining damages with respect to the Class as a whole is appropriate. The common
27 applicability of the relevant facts to claims of Plaintiffs and the proposed Class are inherent in
28

1 Defendant's wrongful conduct because the overcharge injuries incurred by Plaintiffs and each
 2 member of the proposed Class arose from the same anticompetitive conduct alleged herein.

3 199. There are common questions of law and fact specific to the Class that predominate
 4 over any questions affecting individual members, including:

5 (a) Whether Defendant and its third-party sellers unlawfully contracted,
 6 combined, or conspired to unreasonably restrain trade in violation of section 1 of the Sherman Act
 7 by agreeing to refrain from competing outside of Amazon at prices lower than on Amazon
 8 Marketplace;

9 (b) Whether Defendant has unlawfully monopolized, attempted to monopolize,
 10 or conspired to monopolize any of the relevant markets asserted herein, including by way of the
 11 contractual terms, policies, practices, mandates, and restraints described herein;

12 (c) Whether competition in the relevant markets has been restrained and harmed
 13 by Amazon's conspiracy, monopolization, or attempted monopolization, of these markets;

14 (d) Whether consumers and Class members have been damaged by Defendant's
 15 conduct;

16 (e) The amount of any damages; and

17 (f) The nature and scope of injunctive relief necessary to restore a competitive
 18 market.

19 200. **Prevention of inconsistent or varying adjudications:** If prosecution of a myriad
 20 of individual actions for the conduct complained of were undertaken, there likely would be
 21 inconsistent or varying results. This would have the effect of establishing incompatible standards
 22 of conduct for the Defendant. Certification of Plaintiffs' proposed Class would prevent these
 23 undesirable outcomes.

24 201. **Injunctive relief:** By way of its conduct described in this complaint, Defendant has
 25 acted on grounds that apply generally to the proposed Class. Accordingly, final injunctive relief is
 26 appropriate respecting the Class as a whole.

27 202. **Predominance and superiority:** This proposed class action is appropriate for
 28 certification. Class proceedings on these facts and this law are superior to all other available

1 methods for the fair and efficient adjudication of this controversy, given that joinder of all members
2 is impracticable. Even if members of the proposed Class could sustain individual litigation, that
3 course would not be preferable to a class action because individual litigation would increase the
4 delay and expense to the parties due to the complex factual and legal controversies present in this
5 matter. Here, the class action device will present far fewer management difficulties, and it will
6 provide the benefit of a single adjudication, economies of scale, and comprehensive supervision by
7 this Court. Further, uniformity of decisions will be ensured.

8 IX. ANTITRUST INJURY

9 203. During the Class Period, Plaintiffs and Class members directly purchased Class
10 Products, *i.e.*, they directly purchased— from an online retail marketplace seller on a platform other
11 than Amazon Marketplace—new physical products that Amazon’s third-party sellers concurrently
12 offered for sale on Amazon Marketplace and that Amazon monitored as part of its competitive price
13 monitoring. Because of Defendant’s anticompetitive conduct, Plaintiffs and Class members were
14 forced to pay more for Class Products than they would have if Amazon had permitted its third-
15 party sellers to engage in price competition outside Amazon Marketplace. Defendant therefore has
16 caused Plaintiffs and Class members to suffer overcharge damages. Because Defendant continues
17 to enforce its MFN agreements and use them to monopolize the relevant markets, Plaintiffs and
18 Class members are reasonably likely to incur future overcharges for Class Products. Both the actual
19 harm and the threat of future harm are cognizable antitrust injuries directly caused by Defendant’s
20 violations of federal antitrust laws, including its anticompetitive agreements with its third-party
21 sellers, its monopolization, attempted monopolization or conspiracy to monopolize the relevant
22 markets, as alleged herein.

23 204. Defendant, through its unlawful conduct alleged herein, increased prices offered
24 through competing retail e-commerce channels, reduced choice for purchasers, and caused antitrust
25 injury to purchasers in the form of overcharges. Plaintiffs and Class members have sustained, and
26 continue to sustain, significant losses in the form of artificially inflated prices caused by
27 Defendant’s anticompetitive activity. The full amount of such overcharge damages will be
28 calculated after discovery and upon proof at trial. Unless Amazon’s anticompetitive conduct is

1 stopped, Plaintiffs and the Class will incur future overcharges in their direct purchases of Class
2 Products.

3 X. CAUSES OF ACTION

4 FIRST CAUSE OF ACTION

5 VIOLATION OF 15 U.S.C. § 1

6 205. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

7 206. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
8 member of the proposed Class described above.

9 207. Plaintiffs and the Class members have been injured and will continue to be injured
10 in their businesses and property by paying more for Class Products than they would have paid or
11 would pay in the future in the absence of Defendant's unlawful acts.

12 208. Plaintiffs and Class members are direct purchasers because they directly purchase
13 Class Products, whose retail price is inflated as a direct result of Amazon's anticompetitive
14 agreements with its 2.3 million third-party sellers.

15 209. In violation of Section 1 of the Sherman Antitrust Act, Defendant and its 2.3 million
16 third-party merchants unlawfully agreed under Amazon's MFN agreements to refrain from
17 competing with Amazon Marketplace at prices lower than prices on Amazon Marketplace. These
18 unlawful agreements have unreasonably restrained price competition among retailers for online
19 sales of consumer goods and had the effect of establishing a price floor for Class Products.

20 210. Defendant is liable for the creation, maintenance, and enforcement of the
21 agreements under a "quick look" or rule-of-reason standard.

22 211. The agreements have harmed competition in the relevant markets defined herein and
23 caused prices to be higher in those markets than the prices would have been without the agreements
24 between Defendant and its third-party sellers.

25 212. For purposes of Plaintiffs and Class members' quick-look or rule-of-reason claims,
26 the relevant geographic market is the United States. The relevant product markets are any or all of
27 the following markets: the Online Retail Marketplace Market, the Online Retail Sales Market or
28 the Identified Submarkets.

1 213. **Online Retail Marketplace Market:** Defendant's MFN agreements have an open
2 and obvious adverse effect on competition in the in the Online Retail Marketplace Market, where
3 Defendant's MFN agreements act as barriers to market entry for new marketplace competitors and
4 hinder the expansion of existing competitors in that market. This is because the MFN agreements
5 prevent competitor marketplaces from competing on the most significant parameter—the fees for
6 platform services. Competitor marketplaces cannot translate lower fees into lower prices for
7 consumers. Amazon's MFN agreements therefore raise prices above a competitive level, prevent
8 competing marketplaces from entering the market, and restrict the expansion of existing
9 competitors in the market. They also decrease innovation and consumer choice in the relevant
10 market. Defendant also possesses market power in the Online Retail Marketplace Market, where
11 Amazon accounts for 65% to 70% of all online marketplace purchases.

12 214. **Online Retail Sales Market:** Defendant's MFN agreements also have an open and
13 obvious adverse effect on competition in the Online Retail Sales Market, where they raise prices,
14 by shielding Amazon's first-party sales from price competition from its third-party merchants. In a
15 competitive market, Amazon would have to lower its first-party retail prices to compete with lower
16 prices offered by online retail merchants that compete with sales on Amazon's marketplace.
17 Defendant and its co-conspirators possess dominant market power. Retail sales on Amazon's
18 marketplace represent well over 50% of all sales in the Online Retail Sales Market. The marketplace
19 nearest in size to Amazon (eBay) has a distant 6.6% of the market. That Amazon has dominant
20 market power is evident from its power to raise prices above those that would be charged in a
21 competitive market. Amazon also has unique advantages that allow it to exercise market power. It
22 controls 66% of all online product searches for first-time purchases and 74% for goods previously
23 purchased. It has a much larger inventory than any of its competitors. It has a vast digital advantage
24 over its competitors, having amassed detailed consumer preferences and behavior over decades
25 from its 200 million unique monthly customers.

26 215. **Identified Submarkets:** For the reasons previously stated, Defendant's MFN
27 agreements also have an open and obvious adverse effect on competition in the Identified
28 Submarkets of the Online Retail Sales Market, where retail sales on Amazon's marketplace

1 represent over 50% of all sales in the Identified Submarkets and where Amazon's unique
2 advantages allow it to exercise market power in the Identified Submarkets.

3 216. A straightforward application of fundamental economic principles shows that the
4 arrangements in question would have an anticompetitive effect on customers and the relevant
5 markets.

6 217. Defendant and its co-conspirator third-party sellers did not act unilaterally or
7 independently, or in their own economic interests, when entering into the agreements. The
8 agreements and their enforcement substantially, unreasonably, and unduly restrain trade in the
9 relevant markets, and harmed Plaintiffs and the Class thereby.

10 218. The agreements have an open and obvious adverse effect on competition. By forcing
11 its third-party sellers to raise prices on other platforms, Amazon limits the number of meaningful
12 choices consumers have in the sale of Class Products.

13 219. Amazon's MFN agreements have actual detrimental effects, *i.e.*, less competitive
14 pricing, fewer consumer choices, and reduced innovation in online shopping.

15 220. Amazon's relationship with its third-party sellers is further evidence of its market
16 power. It has the power to dictate and arbitrarily change the rules by which its third-party sellers
17 have access to Amazon Marketplace, *e.g.*, extending the amount of time that business buyers have
18 to pay third-party sellers, deciding what products they can sell and whether they can participate as
19 vendors or third-party sellers, and bends the search results rules to promote its FBA and sponsored
20 advertising services. Amazon charges them exorbitant fees that give Amazon a competitive
21 advantage over its third-party sellers and uses their supplier information to contract directly with
22 the supplier and their customer information to decide what areas to focus its retail or product
23 developments.

24 221. There is no legitimate, pro-competitive business justification for Amazon's MFN
25 agreements or any justification that outweighs their harmful effect. Even if a conceivable
26 justification exists, the agreements are broader than necessary to achieve such a purpose.

1 marketplaces that compete with Amazon's marketplace. This, in turn, causes higher prices in
 2 competing online retail marketplaces, and the absence of price competition compels consumers to
 3 shop on Amazon, where they pay supra-competitive prices.

4 228. Plaintiffs and Class members are direct purchasers because they directly purchase
 5 Class Products through a U.S. e-commerce retail channel that competes with Amazon Marketplace.

6 229. Plaintiffs and the Class members have been injured and will continue to be injured
 7 in their businesses and property by paying more for Class Products than they would have paid or
 8 would pay in the future in the absence of Defendant's unlawful acts.

9 230. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing
 10 violations alleged in this Complaint.

11 **THIRD CAUSE OF ACTION**

12 **VIOLATION OF THE SHERMAN ACT –** 13 **ATTEMPTED MONOPOLIZATION (15 U.S.C. § 2)**

14 231. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

15 232. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
 16 member of the proposed nationwide Class described above.

17 233. If Defendant does not already have a monopoly in the relevant markets, it has
 18 attempted to monopolize these markets.

19 234. Through enactment of the pricing policies challenged herein—Amazon's MFN
 20 agreements—Defendant has demonstrated its intent to control online prices of virtually every
 21 consumer good offered in the U.S. retail e-commerce market.

22 235. Through its enforcement of its MFN agreements, Defendant has furthered its goal
 23 of controlling prices of virtually every consumer good offered in the relevant markets.

24 236. Based on its current market power and its gatekeeper status, there is a dangerous
 25 probability that Defendant will succeed in monopolizing the relevant markets.

26 237. Plaintiffs and the Class members have been injured and will continue to be injured
 27 in their businesses and property by paying more for Class Products than they would have paid or
 28 would pay in the future in the absence of Defendant's unlawful acts.

238. Plaintiffs and Class members are direct purchasers because they directly purchase Class Products that are inflated as a direct result of Amazon's anticompetitive conduct.

239. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing violations alleged in this Complaint.

FOURTH CAUSE OF ACTION

**VIOLATION OF THE SHERMAN ACT –
CONSPIRACY TO MONOPOLIZE (15 U.S.C. § 2)**

240. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

241. Plaintiffs bring this federal law claim on their own behalf and on behalf of each member of the proposed nationwide Class described above.

242. Through their MFN agreements, Amazon and its third-party sellers have combined or conspired to create or maintain or attempt to create or maintain Amazon Marketplace's monopoly power in the relevant markets. The MFN agreements facilitate Amazon Marketplace's monopoly power by raising online retail marketplace prices and suppressing competition from competing online marketplaces (like eBay and Walmart) by eliminating the benefit of lowering seller fees to compete in the Online Retail Marketplaces Market.

243. Amazon has taken steps in furtherance of the conspiracy by entering into MFN agreements with each of its third-party sellers and enforcing the MFN provisions to penalize sellers that offer their goods at a lower price on online sites other than Amazon Marketplace. Amazon's co-conspirators have taken steps in furtherance of the conspiracy by entering into the MFN agreements and refraining from lowering their prices outside of Amazon Marketplace even when it would be in their independent economic self-interest to lower their prices on other sites to gain more profit.

244. The purpose and effect of the MFN agreements is to prevent price competition with Amazon Marketplace. Because Amazon and its third-party sellers agreed to restrain competition with Amazon Marketplace, especially from other online retail marketplaces, they share a specific intent to establish or maintain Amazon Marketplace's monopoly power.

1 245. Amazon Marketplace possesses monopoly power in the relevant markets, as
2 demonstrated by its share of these markets and its ability to raise prices above those that would be
3 charged in a competitive market. Amazon also has unique advantages that allow Amazon
4 Marketplace to exercise and maintain market power, *e.g.*, search, inventory, data, and infrastructure
5 dominance.

6 246. Defendant and its third-party sellers have harmed Plaintiffs and the proposed class
7 by raising prices artificially on sites that compete with Amazon Marketplace.

8 247. Defendant and its co-conspirators have willfully acquired or attempted to acquire
9 monopoly power for Amazon Marketplace in the relevant markets by unlawful and improper
10 means, including through its enforcement of its MFN agreements. These provisions establish a
11 price floor based on third-party merchants' price listings on Amazon's marketplace. By agreeing
12 to apply a price floor on all other retail e-commerce channels, Defendant and its third-party sellers
13 largely immunize Amazon Marketplace from competitive pricing in the relevant markets and
14 causes Class Products to be sold at supracompetitive prices and through their agreements,
15 Defendant and its third-party sellers largely immunize Amazon from competition from online retail
16 marketplaces that offer marketplace services at a more competitive rate because Amazon's MFN
17 agreements do not allow its 2.3 million third-party merchants to capitalize on the more favorable
18 fees, *i.e.*, by lowering list prices for consumers on marketplaces that compete with Amazon's
19 marketplace. This, in turn, causes higher prices in competing online retail marketplaces, and the
20 absence of price competition compels consumers to shop on Amazon, where they pay supra-
21 competitive prices.

22 248. Plaintiffs and Class members are direct purchasers because they directly purchase
23 Class Products through a U.S. e-commerce retail channel that competes with Amazon Marketplace.

24 249. Plaintiffs and the Class members have been injured and will continue to be injured
25 in their businesses and property by paying more for Class Products than they would have paid or
26 would pay in the future in the absence of Defendant's unlawful acts.

27 250. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing
28 violations alleged in this Complaint.

JURY TRIAL DEMANDED

251. Plaintiffs hereby demand a trial by jury of all the claims asserted in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

A. The Court determine that this action may be maintained as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representative and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once certified;

B. Adjudication that the acts alleged herein constitute unlawful restraints of trade in violation of the Sherman Act, 15 U.S.C. § 1;

C. Adjudication that the acts alleged herein constitute monopolization or attempted monopolization in violation of the Sherman Act, 15 U.S.C. § 2;

D. Actual damages and treble damages, and such other relief as provided by the statutes cited herein;

E. Pre-judgment and post-judgment interest on such monetary relief;

F. Equitable relief requiring that Amazon cease the abusive, unlawful, and anti-competitive practices described herein (including pursuant to federal antitrust law: *see, e.g.*, 15 U.S.C. § 26);

G. The costs of bringing this suit, including reasonable attorneys' fees; and

H. All other relief to which Plaintiffs and members of the Class may be entitled at law or in equity.

1 DATED: May 13, 2024

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